

No. 20-8087

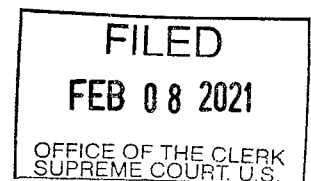
ORIGINAL

IN THE

SUPREME COURT of the United States
William Edward Erickson - PETITIONER
VS.

LORIE DAVIS - RESPONDENT

ON PETITION FOR A WRIT of CERTIORARI TO
United States Court of Appeals 5th Circuit (Texas)



PETITION FOR WRIT OF CERTIORARI

by: Mr. William Edward Erickson
1805402
59 Darrington Road
Rosharon, Texas 77583

THIS Instrument is true and correct under penalty of perjury.

4 / 30 / 21

Questions Presented

1) Is petitioner entitled to a constitutional review from this court on his presented claims at the appeal level regarding his *Ineffective Assistance of Counsel*, for failing to object under the Sixth Amendment of the United States Constitution to:

- (a) involuntary plea, claim attorney coercion;
- (b) use of evidence not adjudicated in court;
- (c) use of extraneous statements in violation of articles on law;

2) Is petitioner entitled to a constitutional review and grant of habeas relief due to destruction of evidence prior to conclusion of initial appeal;

3) Will the claim of ~~unk~~knowing and intelligent waiver be allowed due to violation of Federal Rules as to the capacity of the petitioner;

4) Did the Trial Court abuse discretion in violating Federal Rules of Criminal Procedure at admonishment on a withdrawal of plea claim referring back to the evidence presented in **EXHIBITS**?

Questions NOT ADJUDICATED (SPECIFICALLY)

AT COA

5) was counsel ineffective at punishment hearing for failing to object to involuntary plea in absence of mitigating circumstances (claim 1(c) petition for habeas relief)

6) was counsel ineffective for not objecting to extraneous conduct not adjudicated in court. (claim 1(d)(iii) petition for habeas relief)

7) was counsel ineffective for failing to object to abuse of discretion of the trial court in allowing extraneous statements of victim, guardian, or relatives injected in violation of constitutional and statutory claims. (claim 1(a) petition for habeas relief)

8) was counsel ineffective for not objecting to the barred use of mitigating information for a predetermination of sentence which would constitute abuse of discretion. (claim 1(b) petition for habeas relief)

Questions presented (i), (i)A

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PARTIES TO CASE

William Edward Erickson #1805402
Darrington unit
59 Darrington Road
Rosharon, Texas 77583

Lorie Davis by way of representation
Texas Department of Justice, CJD Director
Edward L. Marshall
Assistant Attorney General
STATE OF TEXAS
P.O. Box 12548
Capitol Station
Austin, Texas 78711-2548
(512) 936-1400
Fax (512) 936-1280
EMAIL: caddocket@oag.texas.gov.

Related case(s)

(iii)

UNITED STATES CONSTITUTION

SIXTH AMENDMENT

The constitutional amendment, ratified with the Bill of Rights in 1791, guaranteeing in criminal cases the right to a speedy and public trial by jury, the right to be informed of the nature of accusation, the right to confront witnesses, right to counsel, and the right to compulsory process for obtaining favorable witnesses.

FOURTEENTH AMENDMENT

The constitutional Amendment, ratified in 1868, whose primary provisions effectively apply the Bill of Rights to the States by prohibiting the states from denying due process and equal protection and from abridging the privileges and immunities of U.S. citizenship. The amendment also gave Congress the power to enforce these provisions, leading to legislation such as the civil rights acts.

* Henderson v. Morgan, 96 S.Ct. 2253, 2258 (1976)

finding that it is appropriate in most cases to presume that the defendant's attorney explained the nature of the crime in enough detail that defendant understood what he was pleading to, but not where defendant had low mental capacity, and where the trial court found as a fact that defendant's attorney did not explain the element of INTENT.

Blacks' Law Dictionary
INTENT - The state of mind accompanying an act, especially a forbidden act.
(!!!!!)

Federal Rules of Criminal Procedure

Rule 11. Pleas

(a) Entering a plea

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving ~~the right~~ in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel, and if necessary have the court appoint counsel - at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and
(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) Ensuring that the Plea is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats or promises in the plea agreement.

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine ^{that} there is a factual basis for the plea.

(C) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, ~~or not oppose~~ or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting the Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11 (c)(1)(A) or (c), the agreed disposition will be included in the judgment.

(5) Rejecting the Plea Agreement. If the court ~~accepts~~ ^{rejects} the plea agreement containing provisions of the type specified in Rule 11 (c)(1)(A) or (c), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) withdrawing a guilty plea or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or a Nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) if the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for ~~withdrawing~~ requesting the withdrawal

~~(C) Finality of a Guilty plea~~

(c) Finality of a Guilty ~~or~~ Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, plea discussion, and related statement is governed by Federal Rule of Evidence 410.

(g) Recording the proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect the substantial rights.

Code of Criminal Procedure Art. 37.07
Verdict Must be General; Separate Hearing on Proper Punishment

Sec. 3. Evidence of prior criminal record in all criminal cases after a finding of guilty.

(a)(1) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Evidence and other evidence of any extraneous crime or bad act that is shown beyond a ~~res~~ reasonable doubt by evidence to have been committed by the defendant or which he could be ~~criminally~~ held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under chapter 17 as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Evidence, and subject to section (h), evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail

~~(iiii) A~~ (iiii) A

Code of Criminal Procedure (EFFECTIVE until January 1, 2021)

Art. 56.03 (2) The Texas crime victim clearinghouse, with the participation of the community justice assistance division of the Texas Department of Criminal Justice and the Board of Pardons and paroles, shall develop a form to be used by law enforcement agencies, prosecutors, and other participants in the criminal justice system to record the impact of an offense on a victim of the offense, guardian of a victim, or a close relative of a deceased victim and to provide the agencies, prosecutors and participants with information needed to contact the victim, guardian, or relative if needed at any stage of the prosecution of a person charged with the offense. The Texas crime victim clearinghouse, with the participation of the community justice assistance division of the Texas Department of Criminal Justice and the Board of Pardons and Paroles, shall also develop a victim information booklet that provides a general explanation of the criminal justice system to victims of an offense, guardians of victims, and relative of deceased victims.

(b) The victim impact statement must be in a form designed to inform a victim, guardian, or a close relative of a deceased victim with a right of rights provided by Articles 56.02 and 56.021 of the Texas Penal Code of the following information:

- (1) the name of the victim of the offense or, if the victim has a legal guardian or is deceased, the name of a guardian or close relative of the victim;
- (2) the address and telephone number of the victim, guardian, or relative through which the victim, guardian of a victim, or a close relative of a deceased victim, may be contacted;
- (3) a statement of economic loss suffered by the victim, guardian, or relative as a result of the offense;

$$\textcircled{P} \textcircled{M} \textcircled{M} \textcircled{M} \textcircled{M} \quad (i i i i A)$$

- (4) a statement of any physical or psychological injury suffered by the victim, guardian, or relative as a result of the offenses as described by the victim, guardian, relative, or by a physician or counselor;
- (5) a statement of any psychological services requested as a result of the offense;
- (6) a statement of any change in the victim's, guardian's, or relative's personal welfare or familial relationship as a result of the offense;
- (7) a statement as to whether or not the victim, guardian, or relative wishes to be notified in the future of any parole hearing for the defendant and an explanation as to the procedures by which the victim, guardian, or relative may obtain information concerning the release of the defendant from the Texas Department of Criminal Justice; and
- (8) any other information, other than facts related to the commission of the offense, related to the impact of the offense on the victim, guardian, or relative.

Code of Criminal Procedure Art. 42.03
Pronouncing Sentence; Time;... (EFFECTIVE January 1, 2021)

Sec. 1.(b) The court shall permit a victim, close relative of a deceased victim, guardian of a victim, as defined by Article 56A.001, to appear in person to present to the court and to the defendant a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim. The victim, relative, or guardian may not direct questions to the defendant while making the statement. The court reporter may not transcribe the statement. The statement must be made

- ~~(ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiii) (xiv) (xv) (xvi) (xvii) (xviii) (xix) (xx) (xxi) (xxii) (xxiii) (xxiv) (xxv) (xxvi) (xxvii) (xxviii) (xxix) (xxx)~~ (iiiiia)

Jurisdiction

28 U.S.C. §§ 1254, 1257

In the Supreme Court of the United States

1 First Street, N.E.

Washington, D.C. 20543

Constitutional and Statutory Provisions

Supreme Court Rules

Miscellaneous ORDER Addressing the Extension of Filing
Deadlines

In light of the ongoing public health concerns relating to COVID-19, the following shall apply to cases prior to a ruling on a petition for a writ of certiorari:

It is ORDERED, that the deadline to file any petition for a writ of certiorari due on or after the date of this order is EXTENDED TO 150 Days ... (etc.)

2021 Edition

Federal Civil Judicial Procedure and Rules page 572
THOMPSON REUTERS

Statement of the Case

Conditional Plea (1924)

A plea of guilty or nolo contendere entered with the courts approval and the governments consent, the defendant reserving the right to appeal any adverse determinations on one or more pretrial motions. If an appeal is successful, the plea is withdrawn and a new one entered.
Fed. R. Crim. Pro. 11 (2)(2)

Petitioner does hereby declare, his belief was, his attorney should have been forthright and upstanding regarding the type of plea a guilty plea was.

Having pled guilty to MURDER, there is an elevated interest in having it explained by counsel, that the plea signed at the time, must have encompassed the element of intent. It was not explained in open court by an admonishment that the petitioner was essentially saying he had a predisposition to commit this crime.

In this instrument, it is sought to convey that there is a negatation and identifiable prejudice; It will be presented in layman form of EXHIBITS; As to the complete and constitutional deficiency of the trial court.

Petitioner seeks to avail himself through the use of due process.

In this final stage of appeal; see Appendix A Editorial History; petitioner seeks use of case law in the following: *U.S. v. Rivera-Clemente*, 813 F.3d 43, 47 (1st Cir 2016) (The courts failure to advise the defendant he will be unable to withdraw plea even if the court rejects the governments sentencing recommendation may constitute reversible error); and

also see *U.S. v. Lavorsi*, 180 F.3d 76, 79-80 (2nd Cir. 1999) (reversible error where court failed to warn defendant he might be unable to withdraw plea if sentence imposed exceeded recommended range); in F.R. Crim P. 11(c)(3)(B) it is stated - a court must warn that a plea cannot be withdrawn if recommendation rejected, petitioner would call attention to ADA signature on EXHIBIT 1A, where it was contemplated a sentence well below the one assessed. A sentence of 40 years instead of LIFE.

In EXHIBIT 1, at the bottom lefthand corner of this instrument of the State of Texas, it is noted in initials WOAR-PSI, which stands for without agreed recommendation of the presentence investigation As EXHIBIT 1 demonstrates, no challenge to the evidence may be mounted Due Process not honored, conferring prejudice.

To couple the EXHIBIT 2, (IAC) Ineffective Assistance of Counsel claim, pages 1-9 petitioner has been diligent in displaying concerns and contentions, of the prejudice that permeates this case. As petitioner has had but layman help, due to only having an 8th Grade education, these 9 pages should be controlling as far as the prejudicial IAC claim(s).

In the Interest of Justice, did a fair and complete look at the COA application transpire? The opinion and order of this case did not have the benefit of evidence due to EXHIBIT 1, and the destruction of evidence.

A plea of guilty in this case violates well known principles; see *U.S. v. Lewis*, 633 F.3d 262 (4th Cir. 2011), (if court rejects plea agreement, must give defendant opportunity to withdraw plea); and

U.S. v. Payton, 168 F.3d 1103, 1105 (8th Cir. 1999) (if court rejects plea agreement, defendant has ABSOLUTE right to withdraw plea); Petitioner would then use EXHIBIT 3, Fed. R. Evid. 410 to avail himself, as the court most assuredly would honor any of the 3 articles on law so described there in EXHIBIT 3. Without the use of Rule 410, denial of natural justice, or the Four-corners Rule petitioner would not be able to avail himself on the official State of Texas documents.

Accordingly, EXHIBIT 4 A, shows the right to appeal which constitutes a leave of the court to withdraw the guilty plea entered. As this is a prosecution for MURDER, petitioner would offer EXHIBIT 4, the actual code of criminal procedures construction for these types of prosecutions; Texas Code of Criminal Procedure Article 38.36, wherein the condition of the mind at the time of offense is relevant.

So, with the right vested from the Trial court, about appeal availability, there is a confusion directly injected, as EXHIBIT 5 language shows the right to appeal is curtailed to non-existent. SEE #2 inside EXHIBIT 5. Does HE or Does he not have the right to appeal withdrawing the guilty plea? see EXHIBITS 5, 4A, 3, 1 in their conjunctive. Please see reverse side of EXHIBIT 5.

Cautionly, continuing, petitioner now comes to show EXHIBIT 6, Admonishment for Murder. For which he should have been duly warned of the element of intent composed within the charge. As a defense against intent can be and would be mounted, a withdrawal of the plea of guilty is forthcoming and herein. of course with the courts leave.

Further, the reverse side of EXHIBIT 6 displays the Trial courts assessment that petitioner pleaded to a

Life Sentence, instead of the ADA's 40 year recommendation. Especially since intent was not established or explained, by article styled 2019-2020 Penal Code EXHIBIT 7A, I declare this untrue.

Using *McCarthy v. U.S.*, 89 S.Ct. 1166; and *Henderson v. Morgan*, 96 S.Ct. 2253 prejudice should be established as EXHIBIT 7A shows a defense in these type of prosecutions. Such as 'sudden passion', as the killing was not a predisposition in the mind of the accused.

EXHIBIT 7, (4), at the top of the page, the court vests petitioner the right to withdraw the trial court's acceptance of the guilty plea in this case.

In a judgment reversed; 6-3 decision; 1 dissent *Garza v. Idaho*, 139 S.Ct. 738; 2019 U.S. LEXIS 1596 it was established: IX

We hold today that the presumption of prejudice recognized in *Flores-Ortega* applies whether a defendant has signed an appeal waiver; 120 S.Ct. 1029;

Because the PSI is relevant as to particularity of case, such as here with petitioner's claims of state violation being backdrop to the federal violation please see *Wiggins v. Smith*, 123 S.Ct. 2527 due to the discussion about the PSI and the courts opine about the ~~relevance~~ relevance regarding the prejudice involved after the review as pertaining to the 6th & 14th Amendments and the alleged violation.

It is well established that a knowing and intelligent waiver is a must for situations such as these. As the Trial Court no longer has jurisdiction due to cited rellances, a review of the petitioner's claims would serve the Constitution protecting the rights of future citizens.

Would protect the public, as trial judges would keep pace with the ever changing norms on litigation, judicial restraint, and implementation of sentences. In these regards, a further inquiry would be warranted. As well, in the alternative, would be a new sentencing hearing to serve the in the Interest of Justice clause that would include mitigating factors encompassing finality and comity.

By this court's leave, please consider all presented and grant a reprieve in this cause.

REASONS FOR GRANTING the writ

To serve the public by protecting the *BILL OF RIGHTS* for future use;

In protecting the rights of future persons;
The right to be informed of the nature of the accusation; in this particular case is intent, MURDER, has components and without clarity of the Supreme Court, a manifest injustice will occur

To protect the mentally challenged by proper admonishment; The rights of the layman need to be solidified through precedent that this court does establish

To protect the layman rights by securing reviews as to the knowing and intelligent waivers of rights with proper admonishment of necessary elements of the charged crime

CONCLUSION

For the foregoing, petitioner alleges cause and prejudice has been outlined in the best of petitioner's layman abilities. Reserving the rights to proper waivers, admonishments, and evidence,

And therefore seeks a set aside of conviction, the grant of the writ of habeas corpus, or in the alternative a new sentencing hearing that would reflect the original plea narrative.