

20-8149
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

QUINN PALACIOS CRUZ, JR.,

Petitioner,

vs.

BOBBY LUMPKIN, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Petitioner pro se

QUESTIONS PRESENTED

INTRODUCTION

Petitioner Quinn Cruz was tried and convicted of capital murder in September 2007. He was automatically sentenced to life without parole. On direct appeal, the capital murder conviction was reversed, the judgment was reformed to murder, and the case remanded to trial for punishment only. On remand, Petitioner was sentenced to life in prison and fined \$10,000 in October 2013.

Petitioner alleged in his state and federal habeas corpus applications that he received the ineffective assistance of counsel at the guilt-innocence trial and later at the punishment trial. Moreover, Petitioner alleged that his trial attorneys at the punishment stage had labored under a conflict of interest.

In addition, Petitioner asserts that the U.S. district court and Circuit Court had erred, *inter alia*, by not addressing and correctly applying the correct methodology that was adopted by this Court.

I.

Whether the Cuyler test for ineffective assistance of counsel due to conflict of interest applies to individual cases of representation and not only to multiple representation cases?

II.

Whether the U.S. district courts and circuit courts are obligated to apply the correct methodology of review adopted by this Court?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED CASES

- State v. Cruz, No. 20060D00581, 205th District Court of El Paso County. Judgment entered Sept. 26, 2007.
- Cruz v. State, No. 08-08-00213-CR, Eighth Court of Appeals. Judgment entered July 28, 2010.
- Cruz v. State, No. PD-1687-10, Court of Criminal Appeals of Texas. Judgment entered March 23, 2011.
- Cruz v. State, No. 08-14-00058-CR, Eighth Court of Appeals. Judgment entered June 8, 2016.
- Cruz v. State, No. PD-1098-16, Court of Criminal Appeals of Texas. Judgment entered March 1, 2017.
- Ex parte Cruz, No. WR-69, 786-02, Court of Criminal Appeals of Texas. Judgment entered May 23, 2018.
- Cruz v. Davis, No. EP-18-CV-243, U.S. District Court for the Western District of Texas. Judgment entered Sept. 10, 2019.
- Cruz v. Lumpkin, No. 19-50972, United States Court of Appeals for the Fifth Circuit. Judgment entered Dec. 18, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Quinn Cruz respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to the petition and is unpublished. Cruz v. Lumpkin, No. 19-50972, December 18, 2020.

The opinion of the United States District Court for the Western District of Texas appears at Appendix B to the petition and is unpublished. Cruz v. Davis, No. EP-18-CV-243-DCG (W.D. Tex., Aug. 6, 2019).

The opinion of the Eighth Court of Appeals appears at Appendix C to the petition and is unpublished. Cruz v. State, No. 08-08-00213-CR (Tex.App.- El Paso 2010, pet. ref'd.).

The opinion of the Eighth Court of Appeals appears at Appendix D to the petition and is unpublished. Cruz v. State, 08-14-00058-CR (Tex.App.- El Paso 2016, pet. ref'd.).

Rehearing denied on October 19, 2016.

JURISDICTION

The judgment of the Fifth Circuit Court of Appeals was entered on December 18, 2020. The time for filing Petitioner's petition for a writ of certiorari was extended by this Court in Order of March 19, 2020, to May 17, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case invokes Amendment VI to the United States Constitution, which provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

The case also invokes Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 with its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 United States Code Section 2254(d) provides that where a claim was adjudicated on the merits in state court, federal habeas relief cannot be granted unless the state-court adjudication:

- (1) resulted in a decision that was [a] contrary to, or [b] involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

STATEMENT OF THE CASE

Petitioner Quinn Cruz and his girlfriend, Tonya West, had moved into the Crest Apartments on October 18, 2005. (RR5: 25-26).¹ West was separated from her husband at the time, but not yet divorced. (RR5: 58-59). Approximately one week later, West left Cruz and moved into another apartment in the same complex. On the morning of November 18, 2005, Cruz and West had a conversation in the parking lot about their break-up.

On February 9, 2006, Cruz was indicted for capital murder in Cause No. 20060D00581. (CR1: 3; 2007).

On his plea of not guilty, Cruz was tried from September 24-26, 2007. Attorneys Jaime Gandara and Edythe Payan of the El Paso Public Defender's Office represented Cruz at the guilt-innocence stage of trial. On the 26th, a jury found Cruz guilty of capital murder for the death of West and her unborn fetus. (CR4: 1357; 2007). Prior to trial, the State had given notice that it would not seek the death penalty. Cruz was automatically sentenced to life without the possibility of parole in the Texas Department of Criminal Justice (TDCJ). (RR7: 162; 2007).

¹ Throughout this brief, references to the record will be made as follows: "CR" for clerk's record and "RR" for reporter's record, with volume and page number, plus "2007" for the year of the guilt-innocence records.

On October 29, 2007, defense counsel filed a motion for new trial. (CR4: 1372; 2007). On December 11, 2011, the motion was automatically overruled by operation of law.

On July 28, 2010, the Eighth Court of Appeals reversed the capital murder conviction, reformed the judgment to reflect the lesser-included offense of murder of West, and remanded the case to the trial court for a new trial on punishment only in Cruz v. State, No. 08-08-00213-CR (Tex.App.- El Paso 2010, pet. ref'd.). See App. C.

On March 23, 2011, the Court of Criminal Appeals of Texas refused discretionary review in Cruz v. State, No. PD-1687-10.

On remand, attorneys Felix Castanon and Nicole Bombara of the El Paso County Public Defender's Office were assigned to represent Cruz at the punishment stage of trial from October 28-31, 2013. (RR4: 41).

Prior to trial, attorney Castanon had filed a "Motion to Withdraw" citing a 'conflict of interest' as grounds for withdrawal on October 17, 2013. See App. E. On October 18, 2013, the trial court denied the motion. As a result, Cruz was sentenced to life in prison with the maximum fine amount of \$10,000 on October 30, 2013. (RR6: 55). This is the first instance where the first federal question for review in this petition was presented in state-court proceedings.

On November 8, 2013, counsel filed a motion for new trial and on February 6, 2014, the motion was automatically overruled by operation of law.

On June 8, 2016, the Eighth Court of Appeals affirmed the judgment of the trial court in Cruz v. State, No. 08-14-00058-CR (Tex.App.- El Paso 2016, pet. ref'd.). See App. D. Rehearing was denied on October 19, 2016.

On March 1, 2017, the Court of Criminal Appeals of Texas refused discretionary review in Cruz v. State, No. PD-1098-16 (Tex.Crim.App. 2017).

On February 14, 2018, Cruz filed an application for a writ of habeas corpus seeking relief from a final felony conviction under the Texas Code of Criminal Procedure, Article 11.07. Cruz raised five grounds for habeas relief, as follows: (1) ineffective assistance of counsel at the guilt-innocence stage of trial; (2) prosecutorial misconduct; (3) ineffective assistance of counsel at the punishment stage of trial; (4) improper jury arguments during closing; and (5) cumulative effect of trial court errors denying effective assistance of counsel.

The application was denied without written order on May 23, 2018, in Ex parte Cruz, No. WR-69, 786-02. Reconsideration/rehearing was also denied by the court on June 11, 2018.

On August 21, 2018, Cruz filed a petition for a writ of habeas corpus by a person in state custody under 28 U.S.C. Section 2254 in the United States District Court for the Western District of Texas, El Paso Division, in Cruz v. Davis,

No. EP-18-CV-243-DCG. (ECF No. 1).²

On December 13, 2018, Respondent's attorneys filed the 'Respondent's Answer with Brief in Support.' (ECF No. 18). In thier brief, they had cited the incorrect methodology for federal courts in determining state court's rationale for unexplained habeas decision. This is the first instance where the second federal question for review in this petition was presented in collateral proceedings.

On September 10, 2018, the district court filed the 'Memorandum Opinion and Order' (ECF No. 24 & 26), which denied Cruz's Section 2254 petition for habeas corpus, motion for evidentiary hearing, certificate of appealability (COA), and all pending actions. See App. B.

In response to these denials, Cruz filed his 'Objections to Memorandum Opinion and Order' (ECF No. 32) on October 24, 2019, which was treated by the district court as a motion to alter or amend judgment under Federal Rule of Civil Procedure Rule 59(e). Cruz also filed a formal motion for certificate of appealability (COA) (ECF No. 33) on November 1, 2019, and a motion for appointment of counsel.(ECF No. 37) on November 8, 2019.

On November 8, 2019, the district court issued its 'Order Dismissing Motion to Alter or Amend Judgment' (ECF No. 35) in which it also denied Cruz's request for a certificate of appealability (COA).

² References to documents filed in the U.S. district court are denoted by "ECF" and document number.

On November 20, 2019, the court denied the motion for appointment of counsel. (ECF No. 38).

On December 16, 2019, Cruz filed a motion for certificate of appealability (COA) in the United States Court of Appeals for the Fifth Circuit in Cruz v. Lumpkin, No. 19-50972. The Circuit Judge denied the motions for a certificate of appealability and appointment of counsel on December 18, 2020. Reconsideration was denied on April 15, 2021.

This petition for a writ of certiorari follows accordingly.

REASONS FOR GRANTING THE PETITION

I. TRIAL COUNSEL AT THE PUNISHMENT STAGE OF TRIAL HAD LABORED UNDER A CONFLICT OF INTEREST THAT RESULTED IN INEFFECTIVE ASSISTANCE OF COUNSEL, VIOLATING CRUZ'S CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A. Trial counsel's actions at the guilt-innocence stage of trial was not harmless and carried over to Cruz's punishment trial several years later.

Attorneys Jaime Gandara and Edythe Payan had represented Cruz at the guilt-innocence stage of trial from September 24-26, 2007. (RR4: 1357; 2007). Cruz had raised in his state and federal habeas corpus applications that attorneys Gandara and Payan had failed to investigate and introduce mitigating evidence in his defense. See Rompilla v. Beard, 545 U.S. 374, 390, 125 S.Ct. 2456, 162 L.Ed.2d 360 (2005) (court found ineffective assistance in capital case where defense attorneys failed to look into the file where they would have found a range of mitigating leads).

Prior to trial, Cruz had notified his attorneys that the victim, Tonya West, had pulled a gun on him on a prior occasion

and threatened to shoot him. Attorneys Gandara and Payan did not raise this matter in the trial proceedings.

The State was represented by Assistant District Attorneys Jennifer Vandenbosch and Aaron Setliff. (RR5: 2; 2007).

Javier Reyes worked with the El Paso Police Department's Crime Scene Unit. (RR5: 52-53; 2007). On September 24, 2007, Officer Reyes was under direct-examination when Mr. Gandara objected to the admittance of State's exhibits 30 through 40, as follows:

THE COURT: Approach please.

MR. GANDARA: They would show that inside of an apartment, nothing relevant to anything except in the closet there are guns and that is the alleged victim's apartment and any guns in her apartment are not relevant to anything in this case. And it is inflammatory.

(RR5: 64; 2007). Also,

THE COURT: Your objection is just to --

MR. GANDARA: 34 Through 40. Each and every one of those.

(RR5: 65; 2007).

Carlos Carrillo was a detective in the El Paso Police Department. (RR5: 190; 2007). On September 24, 2007, Detective Carrillo was under direct-examination when Ms. Payan had objected, as follows:

MS. PAYAN: Your Honor, objecting to anything that is found in Apartment 809 as to relevance and also goes into matters that--

THE COURT: Sustained.

(RR5: 205; 2007).

Ms. Vandenbosch explains the reason for these objections later to the Court, as follows:

MS. VANDENBOSCH: There is the victim's husband, Charles West. As a result of conversation that he had with the victim, he brought his guns to the apartment complex which are the exhibits that the defense objected to.

The victim's apartment, there is a handgun and a shotgun. And that he would testify that he brought those over because of the victim's concern for her well being.

(RR5: 237; 2007).

Cruz had argued that trial counsel's failure to present mitigating evidence at the guilt-innocence trial is not entitled to a presumption of reasonableness because it was neither informed by a reasonable investigation nor supported by any logical position that such failure would benefit Cruz's defense. See Porter v. McCollum, 558 U.S. 30, 40, 130 S.Ct. 447, 452-453, 175 L.Ed.2d 398 (2009).

The State gave notice that it was not seeking the death penalty. The punishment for capital murder was life without the possibility of parole. Counsel's objection to the evidence was unreasonable in light of all the available evidence in the record. Counsel's omission of the evidence carried over to Cruz's punishment trial several years after the conclusion of the guilt-innocence trial.

B. Trial counsel's admittance of the omitted evidence at the punishment stage of trial.

Attorneys Felix Castanon and Nicole Bombara represented Cruz at the punishment stage of trial from October 27-31, 2013. At the trial hearing, they submitted the evidence that attorneys Gandara and Payan had objected as Defense Exhibits 4, 5, 6, and 7. (RR4: 173, DX 4-7).³

The reluctance of attorneys Castanon and Bombara to tell the jury that their co-workers from the El Paso County Public Defender's Office, whom represented Cruz at the guilt-innocence stage of trial, was what brought on the conflict of interest between Cruz and his attorneys at the punishment stage. Mr. Castanon and Ms. Bombara had submitted a proposed charge on sudden passion, which attorneys Gandara and Payan could have done at the guilt-innocence trial in September 2007.

To re-iterate, Mr. Castanon had filed a pre-trial motion to withdraw citing a conflict of interest. That motion was denied by the trial court. Mr. Castanon and Ms. Bombara were forced to represent Cruz at his punishment trial, which ultimately led to Cruz's sentence to life in prison with the maximum fine amount of \$10,000.

In addition, Ms. Bombara had filed a "Motion for New Trial" in which she cites:

"The State is agreement [sic] with this Motion for New Trial as there is new evidence."

(See App. F). This motion was filed on November 8, 2013. The motion was subsequently denied by operation of law on February 6, 2014.

³ Defense exhibits are denoted by "DX" and evidence number.

While this motion for new trial was pending, Ms. Bomabara had filed two "Motion to Withdraw and Substitute Counsel" on November 21, 2013. The trial court granted the motion and Cruz was appointed a new appellate attorney, Mr. Ruben Morales.

To-date, Cruz nor Mr. Morales had been able to locate said new evidence and what the new evidence is.

C. Supporting Arguments

Petitioner had a right to the effective assistance of counsel at trial. U.S. Const. amend. VI; Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). The Sixth Amendment has been applied to the state through the operation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972).

The legal test for ineffective assistance of counsel based on conflict of interest is governed by Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).

Respondent Lorie Davis, in her Answer (ECF No. 18), had stated that Cruz fails to identify any facts remotely implicating Cuyler, and that he did not prove competing interests of other clients. (pg. 20). In addition, Respondent also cites Perillo v. Johnson, 205 F.3d 775, 781 (5th Cir. 2000) in her Answer. Id.

Cruz concedes that the Cuyler test involves multiple representation of clients and so does Perillo. However, these cases do not specifically exclude cases of individual cases of ineffective assistance of counsel based on conflict of interest.

In addition, the U.S. district court expressed the same reasoning as Respondent in the court's "Memorandum Opinion and Order" (See App. B) that Cruz did not prove that his counsel at the punishment hearing represented other clients with competing interests.

The Respondent's Answer and the district court's analysis was erroneous because there is no clear rule that states that the Cuyler test only applies to multiple-representation cases.

This Court has the perfect opportunity to address whether the Cuyler test only applies to multiple-representation cases.

28 U.S.C. section 2254(d)(1) provides that where a claim was adjudicated on the merits in state court, federal habeas relief cannot be granted unless the state-court adjudication:

(1) resulted in a decision that was [a] contrary to, or [b] involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States.

Petitioner asserts that many pro se filers who have reached this stage in their appellate process have read many legal texts from case law to legal books to try and understand court rulings that are vague and not straightforward. This Court has the opportunity to address what standard applies to conflict of interest claims for individual representation.

II. THE U.S. DISTRICT COURT AND THE CIRCUIT COURT OF APPEALS ERRED, INTER ALIA, WHEN THE COURTS DID NOT APPLY THE "LOOK THROUGH" METHODOLOGY ADOPTED BY THIS COURT.

On April 17, 2018, the U.S. Supreme Court adopted the 'look through' methodology for federal courts in determining state court's rationale for unexplained habeas decision in Wilson v. Sellers, 584 U.S. __, 138 S.Ct. 1188, 1190, 200 L.Ed.2d 530, 533 (2018) and Held:

A federal habeas court reviewing an unexplained state-decision on the merits should "look through" that decision to the last related state-court decision that provides a relevant rationale and presume that the unexplained decision adopted the same reasoning. The State may rebut the presumption by showing that the unexplained decision must likely relied on different grounds than the reason decision below.

Respondent incorrectly applied the 'could have supported' approach in the Answer (ECF No. 18) in Harrington v. Richter, 562 U.S. 86, 87, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011), as follows:

"To determine if the state court made an unreasonable application, a federal court "must determine what arguments or theories supported or... could have supported, the state's decision; and then it must ask whether it is possible fairminded jurists could disagree that these arguments or theories are inconsistent with the holding in a prior decision of this Court."

First, Cruz had raised this error in his Traverse (ECF No. 23) but the district court did not address this matter. Second, Cruz raised this issue again in his motion for certificate of appealability in the Fifth Circuit, but the court did not address the matter. Lastly, Cruz raises this matter again in hopes that this Court will address this issue.

In Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992), an en banc, court created the hard rule that a district court must "resolve all claims for relief in a petition for a writ of

habeas corpus pursuant to 28 U.S.C. Section 2254 (1988), regardless whether habeas relief is granted or denied." See also Porter v. Zook, 803 F.3d 694 (4th Cir. 2015); United States v. Powell, 161 F.3d 738 (D.C. Cir. 1998).

This Court is in the perfect position to address whether all U.S. district courts and circuit court of appeals are obligated to follow the 'look through' methodology.

Petitioner case raises questions of interpretation of the Right to Effective Assistance of Counsel at Trial under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendments to the United States Constitution.

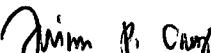
Cruz's 11.07 state application for a writ of habeas corpus was denied without a written order. The federal courts did not address nor did they apply the correct methodology in Cruz's case.

The Fourteenth Amendment provides, in due part, that: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law...." U.S. Const. amend. XIV.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully submitted,



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VERIFICATION

I have read the foregoing 'Petition for a Writ of Certiorari' and hereby certify that the matters alleged in this petition are true. I certify under the penalty of perjury that the foregoing is true and correct.

Executed at New Boston, Texas, on this 14th day of May, 2021.

Quinn P. Cruz
Quinn Palacios Cruz, Jr.