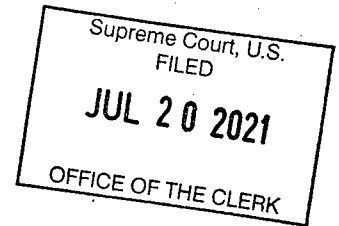


21-5377
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Alexander Ascencio- pro-Se — PETITIONER
(Your Name)

vs.

Bobby Limpkin, TDCJ-Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT COURT, NEW ORLEANS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ALEXANDER ASCENCIO # 1205296

(Your Name)

Darrington Unit-59-Darrington RD.

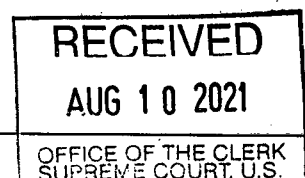
(Address)

Rosharon, Texas 77583

(City, State, Zip Code)

N/A

(Phone Number)



QUESTION(S) PRESENTED

I

WHETHER THE LOWER COURT DENIED PETITIONER DUE PROCESS, WHEN THE COURT DID NOT CONSIDERED THE SUFFICIENCY OF THE EVIDENCE ON THIS CASE WHICH WAS A CRUCIAL ISSUE IN THE PRESENT CASE?

The lower courts claims that the sufficiency of the evidence are not cognizable on a habeas corpus proceeding. This claim goes against the Watson v State ruling which ruled that the only standard the reviewing courts should used when considering the sufficiency of the evidence was Jackson v Virginia even on a habeas corpus proceeding.

II

WHETHER PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED UNDER THE ARTICLE I SECTION 10 OF TEXAS CONSTITUTION AND UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, BECAUSE THE LOWER COURTS IMPROPERLY APPLIED THE STARICKL- AND V WASHINGTON STANDARD ON THIS CASE AT BAR?

LIST OF PARTIES

- [X] 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

BROOKS V STATE 323 SW 3d 893;2010 Tex.Crim.App.
Lexis 1240.

JACKSON V VIRGINIA 443 U.S.307 (1979)

EX PARTE PERALEZ V STATE 215 SW 3d 418-19.

STRICKLAND V WASHINGTON 104 S.CT. 2052 (1984)

RAMPILLA V BEARD,125 S.CT.,2456 (2005)

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APPENDIX A	No.20-20502-ASCENCIO V LIMPKIN Decision of district court USDC NO. 4:19-CV-3286 Fifth Circuit U.S. Circuit judge Jennifer Walker Elrod
APPENDIX B	No.H-19-3286 Ascencio v Lorie Davis Senior U.S. District Judge Nancy F. Atlas Decision of district court
APPENDIX C	Decision of the Court of Criminal appeals on 11.07
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STATUTES AND RULES

OTHER

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 A to the petition and is

☐ reported at Fifth Cir.case no.20-20502; 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 B to the petition and is

☐ reported at civil action H-19-3286; 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 Court of Criminal Appeals court appears at Appendix D to the petition and is

☒ reported at No.01-16-00200-CR-2017 WL 2255720; 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 June 1, 2021.

☒ 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 June 6/07/19.
A copy of that decision appears at Appendix C .

☐ A timely petition for rehearing was thereafter denied on the following date: N/A , 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 N/A (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

Petitioner contends that his due process right has been denied because the lower courts did not consider the factual sufficiency of the evidence.

Under the United States Constitution and the Fifth and Fourteenth Amendments which states:

" No person should be deprived of life, liberty, or property without due process of law; nor shall any person within its jurisdiction be denied the equal protection of the laws.

Petitioner contends that he was denied the effective assistance of counsel as guaranteed under the article I, section 10 of the Texas Constitution and under the Sixth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

A grand jury in Harris County, Texas returned an indictment against Ascencio in Cause No 1302186, charging him with aggravated sexual assault of a child younger than 14 years of age. A jury in the 209th District Court for Harris County, Texas, found him guilty as charged and sentenced him to 55 years imprisonment. Ascencio timely filed for direct appeal. The Court of Appeals affirmed the conviction. Ascencio v State No.01-16-00200-CR, 2017 WL 2255720 at * 1-2 (Tex.App.Houston [1st Dist] Sept.27,2017). Thereafter the Court of Criminal Appeals refused the petition for discretionary review. Ascencio timely filed a writ of habeas corpus application under Article 11.07 of the Texas Code of Criminal Procedure.

Ascencio argued further that the evidence was insufficient to support his conviction. The state habeas corpus court entered finding of fact and concluded that Ascencio's challenge to the sufficiency of the evidence was not cognizable on habeas review and that none of his other claims had merit.

Ascencio filed his federal petition on August 14, 2019. On August 13, 2020, the District Court entered a final judgment, denying Ascencio's § 2254 petition. On August 13, 2020, the District Court declined to issue a certificate of appealability. On June 1, 2021 the United States Court of appeals denied the C.O.A.

REASONS FOR GRANTING THE PETITION

I

Petitioner contends that the lower Courts denied him Due Process of law when the courts declined to consider the sufficiency of the evidence, that would have proved that he was innocent of the charge against him.

The lower Courts also ignored the Jackson v Virginia standard when the courts declined to consider the sufficiency of the evidence.

The lower Court cited several cases in which the ruling was that a challenge to the sufficiency of the evidence was not cognizable on a habeas corpus proceeding and that a challenge to the sufficiency of the evidence should be made on direct appeal only. This conclusion of the lower court is contrary to the ruling on BROOKS 3213 SW 3d 893; 2010 Tex.Crim.App. Lexis 1240. (323 SW 3d 916) The constitutionally required of Jackson standard. " In 1979, the United States Supreme Court delivered its opinion in Jackson v Virginia and set the national standard for review of the sufficiency of the evidence under Due process Clause of the federal constitution. " In All Criminal trials, state and federal the government must produce "sufficient evidence to justify a rational trier of the facts to find guilt beyond a reasonable doubt."

The Court noted that a "reasonable doubt" has often been described as one "based on reason which arises from the evidence or a lack of evidence."

Legal sufficiency in criminal cases is judged by the quality, not the quantity, of evidence is "such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded," In criminal cases, only that evidence which is sufficient in character, weight, and amount to justify a factfinder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction. As the Court of Criminal Appeals of Texas stated in Brooks and Watson."

" As the Court with the final appellate jurisdiction in this State, we decided that the Jackson v. Virginia standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt." ALL OTHER CASES TO THE CONTRARY, INCLUDING CLEWIS, ARE OVERRULED.

In short if the State is required to present evidence that would support the conviction of the offense charged, It would be in the best interest of justice that Petitioner be entitled to present evidence that would support his innocence.

In the case at bar there was nothing that can prove beyond a reasonable doubt that Petitioner has committed the offense to which he was convicted of. But unfortunately, the lower courts declined

to even considered the evidence that would support petitioner's claims.

II

Petitioner contends that he was denied the effective assistance of counsel as guaranteed by the Article I, Section 10 of the Texas Constitution and the Sixth and Fourteenth Amendments to the United States Constitution, because the lower court improperly applied the Strickland v Washington standard on this case at bar.

Petitioner cited several areas where he contends that his counsel failed to provide him with requisite effective assistance of counsel which is constitutionally mandated:

Petitioner counsel failed to investigate the following:

a) his original indictment in cause no.1302186 and its dismissal; b) a defense based on his claim that J.C. fabricated her claim after consulting Internet resources by attempting to get him deported or imprisoned for retaliation for his discovery that she had "multiple boyfriends: c) (a Potential witness, Puerto Arturo, who would have substantiated his claim that J.C. concocted her claims against him: and (d) letter sent to him by J.C's mother, stating that she believed him.

Petitioner cites RAMPILLA V BEARD, 125 S.C.T. 2456 (2005). This case calls for specific application of the standard of reasonable competence required on the part of defense counsel and by the Sixth Amendment. The Rampilla's Court held that even when a capital defendant's family members and the defendant himself have suggested that no mitigating evidence is available. His lawyer is bound to make reasonable efforts to obtain and "review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the sentencing phase of trial.

Petitioner also cited STRICKLAND V WASHINGTON 104 S.C.T. 2052 (1984).

" It is a well recognized principle of constitutional law that a defendant in a criminal case has a right to the effective assistance of counsel, regardless of whether counsel is appointed or retained. Ex Parte Raborn, 658 SW 2d 602 (Tex.Crim.App.1983). Both State and federal standards for a successful challenge of ineffective assistance of counsel warranting a reversal of conviction and the basis for a new trial are the same.

The standard has a two part test: first, the defendant must establish that his trial counsel's performance was deficient and, second, the defendant must show that his deficient performance prejudiced his defense. The defendant bears the burden of proof of showing that his counsel was inef-

fective by a preponderance of the evidence. See Strickland v Washington 104 S.Ct. 2052 (1984); Hernandez 726 SW 2d 53 (Tex.Crim.App.1986). However despite the court's specific articulation of the two prong test, the United States Supreme Court has made it clear that the test is a flexible one, and one that should focus on whether the result of the proceeding were sufficiently undermined by the deficient performance, rather than on whether the defendant has met the exacting evidentiary standard. Said the Court:

" We believe that a defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case.... The result of a proceeding can be rendered unreliable, and hence, the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome."

Strickland v Washington, supra at 2068.

The court further stated with respect to the application of the test that:

" A court should keep in mind that the principles we have stated do not establish mechanical rules. [T]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding.. In every case the court should be concerned with whether...the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." Id at p.2069.

Trial counsel is presumed to have knowledge of legal principles which are neither novel or unsettled and that in order to render effective assistance of counsel, the lawyer must know how the law, rules, or statutes apply to the facts and circumstances of his client's particular case. See *Ex Parte Welch* 981 SW 2d 183 (Tex.Crim.App.1998). Petitioner's counsel wholly failed in this regard because he should have been well versed in the applicable rules of evidence and case law with respect of the indictment and the evidence that could have been presented to aid his client's case.

Although a Court looks to the totality of the representation and the particular circumstances of each case in evaluating the effectiveness of counsel, sometimes a single error is so egregious and substantial that it, alone, is sufficient to cause the lawyer's assistance to fall below the constitutionally accepted standard. *Perrero* 990 SW 2d 896 (Tex.App.El.Paso 1999). This case falls squarely within this category.

Therefore, given the foregoing examples of the ineffectiveness of trial counsel in this case, the Petitioner contends that his counsel's performance fell below an objective standard of reasonableness under existing professional norms.

Accordingly, Petitioner respectfully requests that this Honorable Court grant this his application for a Writ of Certiorary.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Pro-Se, Alexander Ascencio

Date: 7-7-21