

No. 21-5389 ORIGINAL

FILED

AUG 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Juan Jose Martinez — 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

Juan Jose Martinez # 2017980
(Your Name)

12071 FM 3522
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether Petitioner received ineffective assistance of trial counsel for opening the door to otherwise inadmissible evidence?
2. Whether Petitioner received ineffective assistance of trial counsel for failing to advance an argument as to why his enhancement was illegal?
- *3. Whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A - White Card from Texas Court of Criminal Appeals denying without written order Habeas Corpus
APPENDIX B - White Card from Texas Court of Criminal Appeals denying motion for reconsideration/rehearing
APPENDIX C
APPENDIX D
APPENDIX E
APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Anderson v. State, 394 S.W3d 531 (Tex. crim. App. 2013)	6, 7
Ex parte Buck, 418 SW3d 98 (Tex. crim. App. 2013)	10
Coleman v. Thompson, 111 S.Ct. 2546 (1990)	8, 9
Douglas v. California, 83 S.Ct. 814 (1963)	8, 9, 10
Evitts v. Lucey, 105 S.Ct. 830 (1985)	8
Fisk v. State, 510 SW3d 165 (Tex. App. - San Antonio 2016)	7
Freeman v. State, 125 SW3d 505 (Tex. crim. App. 2003)	10
Ex parte Graves, 70 SW3d 103 (Tex. crim. App. 2002)	8
Halbert v. Michigan, 125 S.Ct. 2582 (2005)	8
Martinez v. Ryan, 132 S.Ct. 1309 (2012)	8, 9
Prudholm v. State, 333 SW3d 590 (Tex. crim. App. 2011)	6
Ross v. Moffitt, 94 S.Ct. 2437 (1974)	9
Trevino v. Thaler, 133 S.Ct. 1911 (2013)	8, 10
 STATUTES AND RULES	
CRS 18-1.3-501(3)(c)	7
CRS 18-3-402(1)(e)	7
Tex. Penal Code § 12.42	6
Tex. Penal Code § 22.011	7

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 _____ 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 A 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 Texas Court of Criminal 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 3rd Feb 2021.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
18th May 2021, and a copy of the order denying rehearing appears at Appendix B.

☐ 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Fourteenth Amendment to US Constitution
 - Due Process Clause
 - Equal Protection
- Sixth Amendment to US Constitution
 - Effective Assistance of Counsel.

STATEMENT OF THE CASE

Petitioner Martinez has a prior out-of-state conviction which was used to enhance the underlying cause to a mandatory LIFE without Parole.

Petitioner filed a state habeas corpus on the 8th October 2020, which was denied without findings or written order on 3rd February 2021.

Petitioner immediately filed a motion to reconsider/rehearing raising the fact there was no hearing on the merits of his claims, and argued that he was denied due process and equal protection for not having access to counsel during the initial-review collateral proceeding. Petitioner's motion was subsequently denied on 18th May 2021.

Petitioner now seeks a Certificate of Certiorari by this Court.

REASONS FOR GRANTING THE PETITION

1. Whether Petitioner received ineffective assistance of trial counsel for opening the door to otherwise inadmissible evidence?

This question should be taken up by this court because effective assistance of counsel is a bedrock principle underpinning our judicial system, and there is significant risk of injustice when a prisoner is not afforded counsel in an initial-review collateral proceeding.

The trial court held during trial that Cameron Collins was the outcry witness for the allegations involving rubbing of the genitals and the breast, but not as to the alleged sexual intercourse (5 RR 13-14).

However, during cross-examination, Defense counsel questioned Collins about whether the complainant "used the word sexual intercourse" and subsequently opened the door to allow the Prosecution to go into the sexual intercourse outcry with Cameron Collins (5 RR 58, 60).

Petitioner argued that he received ineffective assistance of trial counsel for opening the door to otherwise inadmissible evidence of an outcry of sexual intercourse.

Collins' testimony about an outcry of sexual intercourse bolstered the testimony of the complainant and the actual outcry witness. Collins status as an expert witness inherently carries significant weight with the jury and unfairly prejudiced Petitioner through additional testimony of the sexual intercourse outcry that was otherwise prohibited by the outcry witness rule.

Had counsel not introduced such testimony by opening the door the outcome of the trial may have been different.

2. Whether Petitioner received ineffective assistance of trial counsel for failing to advance an argument as to why his enhancement was illegal?

This question should be taken up by this Court because effective assistance of counsel is a bedrock principle underpinning our judicial system, and there is significant risk of injustice when a prisoner is not afforded counsel in an initial-review collateral proceeding.

Petitioner Martinez' enhanced sentence to LIFE without parole is illegal.

Petitioner has a prior out-of-state conviction which was used to enhance the underlying cause to a mandatory LIFE without parole. Petitioner contends that his enhanced sentence is illegal because his Colorado conviction is not "substantially similar" for enhancement purposes to the Texas offense because there is significant disparity in class, degree and punishment range in light of the Colorado conviction being a MISDEMEANOR with a maximum sentence of only six months.

Under Texas Penal Code §12.42 if a defendant is convicted of certain sexual offenses and he has a prior conviction for one of the sexual offenses listed in §12.42(c)(2)(B), a punishment is an automatic life sentence.

The legislature also mandates the automatic enhancement to life imprisonment if the defendant is previously convicted of an offense under the laws of another State containing elements that are substantially similar to the elements of an enumerated Texas offense. See, Anderson v. State, 394 S.W.3d 531 (Tex. Crim. App. 2013)

In Prudholm v. State, 333 S.W.3d 590 (Tex. Crim. App. 2011), the Texas Court of Criminal Appeals explains the process for determining if an out-of-state sexual offense contains "substantially similar" elements to a listed Texas sexual offense for purposes of enhanced punishment under Texas Penal Code §12.42(c)(2).

The second prong of an analysis under Prudholm is the most relevant to the case at hand. It requires that the elements must be substantially similar with respect to the individual or public interests protected and the impact of the elements on the seriousness of the offense.

This is itself a two-step analysis. First the court must determine if there is a "similar danger to society" that the statute is trying to prevent. Secondly, a court must then determine if the class, degree, and punishment range of the two offenses are substantially similar. Anderson, at 535-37. See also, Fisk v. State, 510 S.W.3d 165, 176 (Tex. App. - San Antonio 2016).

In 2007 Petitioner was found guilty of an out-of-state sexual assault pursuant to Colorado Revised Statute 18-3-402(1)(e).

However, pursuant to Colorado Revised Statute 18-1.3-501(3)(c) this is a MISDEMEANOR offense with a maximum sentence of six months.

This misdemeanor was used to enhance the underlying cause to mandatory Life without parole. The State of Texas alleges that CRS 18-3-402(1)(e) is substantially similar to Texas Penal Code §22.01(a)(2) for enhancement purposes.

However these two offenses are not substantially similar in class, degree or punishment range because §22.01(a)(2) is a first degree felony punishable by 5-99 years or life in prison, while CRS 18-3-402(1)(e) is merely a misdemeanor with a maximum sentence of six months. There is significant disparity in the seriousness of the Colorado and Texas offenses.

Counsel entered a plea of "not true" to the enhancement of Petitioner's sentence (6 RR 11) but when given the opportunity by the court he offered absolutely no legal reasons why the sentence should not be enhanced.

Had counsel presented such an argument there is a reasonable probability the court would have held the enhancement and automatic life sentence without parole to be inappropriate and illegal. Petitioner would have then proceeded to the sentencing phase of trial without an enhanced sentence.

For this reason, Petitioner contends that he received ineffective assistance of trial counsel.

- ★ 3. whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial?

With this question, Petitioner seeks to vindicate the Constitutional Right to Habeas Counsel in initial-review collateral proceedings. It calls for an answer to the question expressly "left open" in Coleman v. Thompson, 111 S.Ct. 2546 (1990), and touched on by Martinez v. Ryan, 132 S.Ct. 1309 (2012), and Trevino v. Thaler, 133 S.Ct. 1911 (2013).

The Texas Court of Criminal Appeals has decided an important question of federal law that has not been, but should be, settled by this Court. Although the Supreme Court has never resolved the question at hand, the Texas Court of Criminal Appeals has held that a state prisoner does NOT have a Constitutionally protected right to Habeas Counsel in initial-review collateral proceedings. See, Ex parte Graves, 70 S.W.3d 103 (Tex. crim. App. 2002) [Holding: "There is no constitutional right to effective assistance of counsel on a writ of habeas corpus"]; see also, Ex parte Sledge, 391 S.W.3d 104 (Tex. Crim. App. 2013).

Petitioner avers that the Texas Court of Criminal Appeals holding is contrary to the Supreme Court precedents of Douglas v. California, 383 S.Ct. 814 (1963); Evitts v. Lucey, 105 S.Ct. 830 (1985); Halbert v. Michigan, 125 S.Ct. 2582 (2005); and the rationales of Martinez and Trevino.

Although the holding in Martinez was equitable and does not apply to state courts, the rationale highlighted a significant risk of injustice when a prisoner is not afforded counsel in an initial-review collateral proceeding.

After the scathing criticism in Trevino, which articulated how the Texas procedural system fails to provide an adequate vehicle by which prisoners may effectively challenge the effectiveness of trial counsel's performance, the State of Texas has refused to correct the clear flaws in its system.

This has created a violation of Constitutional magnitude which affects every indigent prisoner in Texas. All indigent Texas prisoners will continue to receive inadequate Habeas review in violation of the Fourteenth Amendment until the Supreme Court answers this question. Therefore, the question presented is of great public importance.

In a subsequent ruling, Trevino, this Court held that Texas procedure made it "virtually impossible" for appellate counsel to present an adequate ineffective assistance claim on Direct Appeal. See, Trevino, at 1918.

Consequently, the better and prescribed procedural mechanism for pursuing such a claim is almost always through writ of Habeas Corpus proceedings. See also, Freeman v. State, 125 S.W.3d 505, 506 (Tex. Crim. App. 2003).

This makes Habeas Corpus the "initial-review collateral proceeding" for ineffective assistance claims in Texas and is the equivalent of a prisoners Direct Appeal as to such claims. See, Ex parte Buck, 418 S.W.3d 98, 109 (Tex. Crim. App. 2013).

Petitioner avers that this distinction should put the answer to this question squarely under Douglas. This is because:

- a. Habeas Corpus is a WRIT OF RIGHT. See, Tex. Const. 1, §12; Tex. Code Crim. Proc., art 1.08.
- b. Habeas Corpus is the designated First-Tier and "initial-review collateral proceeding" for ineffective assistance claims in Texas.
- c. Habeas Corpus decides the claims merits and no other court has addressed the ineffective assistance claims.
- d. Error-correction is the Habeas proceedings prime function.
- e. Habeas Corpus is NOT a discretionary review.
- f. Habeas Corpus is a prisoners "one and only appeal" as to ineffective assistance claims.
- g. Prisoners are generally ill equipt to represent themselves because they have no brief or court opinion to guide them; the inherent restrictions of their confinement places them in no position to develop the evidentiary basis of ineffective assistance claim; and navigating the appellate process is a perious endeavour.

For these reasons, it is of great public importance that this Court GRANT Certiorari to address this unanswered question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Juan Martinez

Date: 8th August 2021