

No. 21-5403

ORIGINAL

Supreme Court, U.S.

FILED

JUN 16 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Charles Edwin Tumlinson — PETITIONER
(Your Name)

vs.
Bobby Lumpkin, Director of Texas
Department of Criminal Justice — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals - 5th Circuit (Cause # 20-20086)

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

PETITION FOR WRIT OF CERTIORARI

Charles Edwin Tumlinson
(Your Name)

938 S. FM 1673
(Address)

Snyder, TX. 79549
(City, State, Zip Code)

N/A
(Phone Number)

(Questions Presented - Page 1 of 2 pages)

Questions concerning U.S. Court of Appeals decisions in conflict with the Supreme Court of the United States decisions and case law and the U.S. Court of Appeals – 5th Ckt. in conflict with other U.S. Court of Appeals, including the 2nd Ckt., and concerning the 6th and 14th Amendments of the U. S. Constitution.

1. Should the lower federal courts be allowed to continue to violate the Supreme Court of the United States' case law and deny Pro-Se applicants' relief when their petitions have Fundamental Miscarriage of Justice claims and violations of the 6th and 14th Amendments of the U.S. Constitution claims; especially, when such claims can lead to a possibly actually innocent petitioner being illegally imprisoned?
2. Should an applicant or petitioner be barred (denied) justice and relief for Fundamental Miscarriage of Justice and U.S. Constitutional violation claims; especially, when lower federal courts and state courts do so through procedural rules and laws which are lesser and contrary to the U.S. Constitution?
3. When a petitioner needs Counsel or an Evidentiary Hearing in order to prevent a Fundamental Miscarriage of Justice, should the Court appoint Counsel or order an Evidentiary Hearing?
4. When a petitioner does not request Counsel or an Evidentiary Hearing for claims of Actual Innocence, or Fundamental Miscarriage of Justice, or a 6th or 14th Amendment of the U.S. Constitution violation, does the court not have the right and even the obligation to uphold the U.S. Constitution, to do justly, and appoint counsel or order the lower court to grant an Evidentiary Hearing and/or other relief or assistance to ensure fundamental justice and to uphold the U.S. Constitution?
5. Does the Supreme Court of the United States' own procedural rules prevent justice and deny U. S. Constitutional rights, by procedurally time barring the Supreme Court of the United States clerk from accepting and filing "Petition for Writ of Certiorari" or other Motions, etc.; especially, pro se indigent applicants with claims of Fundamental Miscarriage of Justice and U.S. Constitutional violations; particularly, when wrongful imprisonment may have possibly resulted for an actually innocent person?
6. Is the 5th Ckt. U.S. Court of Appeals in conflict with the 2nd Ckt. U.S. Court of Appeals' decision in U.S. vs Rosillo, 853F.2d 1062, 1066-6f (1988) because the Trial court did not make an "on-record" account of medications before entering a guilty plea and the 5th Ckt. has not reversed this error?

(Questions Presented - Page 2 of 2 pages)

7. Should the Trial Court judge, and others, be allowed to freely change the defendant's plea agreement after the defendant signs it, by simply making an "on-record" account of doing so; especially, by illegally changing the defendant's plea to "guilty"?

8. Should the trial court be allowed to enter an "Uncognizable Plea" as "Guilty"?

9. Will a Fundamental Miscarriage of Justice result in failure to entertain claims (Schlup v. Delo), when the petitioner is denied the "necessity" of a lawyer (Evitts v. Lucey – the Supreme Court of the United States) to prepare and present claims of Ineffective Assistance of Counsel on Appeal.?

10. Does the "necessity" of a lawyer apply to Pro Se applicants with possible grounds for a "Petition for Writ of Certiorari" (such as violations of the 6th and 14th Amendments of the U.S. Constitution, U.S. Court of Appeals conflicts with the Supreme Court of the United States, or Fundamental Miscarriage of Justice claims)?

11. Did this petitioner suffer issues from "Ex parte Garcia" (Criminal Court of Appeals of Texas – 2016)?

12. Should the "Rules of the the Supreme Court of the United States" yield for the fulfillment of "Constitutional Guarantees" in light of (Washington v. Texas, the Supreme Court of the United States) and (Whitmore v. State) or to prevent a "Fundamental Miscarriage of Justice"?

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 CASE	4-5
REASONS FOR GRANTING THE WRIT	6-11
CONCLUSION	12

INDEX TO APPENDICES

APPENDIX A (U.S. District Court – 4-23-2020)	13
APPENDIX B (U.S. Court of Appeals – 5 th Ckt. – 3-25-2021)	14
Appendix C (U.S. Court of Appeals – 5 th Ckt. – 4-20-2021)	15

INDEX TO EXHIBITS

EXHIBIT A (Trial Court Transcript of Plea Agreement Hearing)	16-33
EXHIBIT B (Letter from Attorney – 12-22-2014)	34-35
EXHIBIT C (Military Discharge Pare – DD214)	36

TABLE OF AUTHORITIES CITED (page 1 of 2)

CASES	PAGE NUMBER
1. <u>Alvarez v. State of Texas</u> ; Court of Appeals of Texas (1st District) Houston; <u>2002</u> 79 S.W. 3d679; #01-99-01444 CR; 2002 Tex. App. Lexis 5014	9
2. <u>Blue</u> Texas Court of Criminal Appeals, <u>41 S.W. 3dat 131-133</u> See reference in <u>Melvin Lee Duke v. State of Texas</u> , Texas Court of Appeals 14 th District #01-16-00245-CR	9
3. <u>Bostick v. Stevenson</u> ; U.S. Court of Appeals (4th Ckt.) #08-6331; Decided: Dec. 17, <u>2009</u> ; 589 F.3d160; 2009 U.S. App. Lexis 27724	6
4. <u>Evitts v. Lucey</u> ; Supreme Court of the United States Jan, 21, <u>1985</u> ; 105 S. Ct. 830; #83-1378; 83 LED 2d 821; 469 U.S. 387	7, 9
5. <u>ExParte, Garcia</u> , Irving Magana Garcia, Court of Criminal Appeals of Texas, <u>2016</u> ; 486 S.W. 3d 565; WR-83, 681-01; (April 6, 2016)	8
6. <u>Hodge v. USA</u> ; U.S. Court of Appeals (3rd Ckt.) Feb. 3, 2009; No. 08-1918; 554 F.3d 372; 2009 U.S. App. Lexis 1952	6, 8
7. <u>Martinez v. Ryan</u> ; 182 LED 2d.272; 566 U.S. 1; Supreme Court of the United States – March 20, 2012; 132 S. Ct. 1309; #10-1001	7, 8
8. <u>Massingill v. State of Texas</u> ; Court of Appeals of Texas (3 rd District) Austin; <u>1999</u> 8 S.W. 3d733; decided: Dec. 16, 1999	9
9. <u>McQuiggin v. Perkins</u> , Supreme Court of the United States Decided: May 28, 2013; 569 U.S. 383; 133 S. Ct. 1924; 185 LED 2d 1019; #12-126	8
10. <u>Prudhomme v. State of Texas</u> ; Court of Appeals of Texas (6th District) Texarkana; 28 S.W. 3d114; #06-99-00114-CR; Aug. 16, <u>2000</u> ; 2000 Tex. App. Lexis 5438	9
11. <u>Rogers v. Maggio</u> ; U.S. Court of Appeals (5th Ckt.) #82-3640; Sept. 9, <u>1983</u> ;	4, 7
12. <u>Schlup vs Delo</u> (Supreme Court of the United States), 115 S. Ct 851; #93-7901 Decided: Jan. 23, <u>1995</u> ; 130 LED 2d808; 513 U.S. 298	8
13. <u>Townsend v. Sain</u> ; 372 U.S. 293; 9 LED 2d 770, Supreme Court of the United States March 18, <u>1963</u>); 835 S. Ct. 745	7
14. <u>Trevino v. Thaler</u> , Supreme Court of the United States Decided: May 28, 2013; 569 U.S. 413; <u>133 S. Ct. 1911</u> ; 185 LED 2d 1044; #11-10189	4, 7, 8

TABLE OF AUTHORITIES CITED (page 2 of 2)

CASES	PAGE NUMBER
15. <u>U.S. vs Rosillo</u> ; U.S. Court of Appeals (2 nd Ckt.); Aug. 11, <u>1988</u> ; 853F.2d 1062; Docket #87-1437; 1988 U.S. App. Lexis 11097	5, 9
16. <u>U.S.A. v. Birdwell</u> ; U.S. Court of Appeals (5th Ckt.) #88-4652; Nov. 8, <u>1989</u> ; 887 F.2d643; 1989 U.S. App. Lexis 16880	4, 7
17. <u>U.S.A. v. Correa-Torres</u> ; U.S. Court of Appeals (1st Ckt.) <u>2003</u> ; #01-1172; April 9, 2003; 326 F.3d18; 2003 U.S. App. Lexis 6731	9
18. <u>Whitmore v. State of Texas</u> ; Court of Appeals of Texas; Oct. 13, <u>1976</u> ; 570 S.W. 2d889; 1976 Lexis 11097	8

STATUTES AND RULES

1. <u>Federal Rules of Criminal Procedures</u> – <u>Rule 11</u> – <u>Guilty Pleas</u> Rule 11 (b)(1)(B), Rule 11 (b)(2) and Rule 11 (b)(3)	9, 10, 11
2. <u>Texas Criminal Law Code</u> <u>Article 26</u> and <u>Article 27</u> on both <u>Not Guilty Pleas</u> and on <u>Guilty Pleas</u>	11
3. “ <u>Texas Criminal Practice Guide</u> ” (Evidentiary Hearings) Page 6 – “[1] <u>In General</u> ”, Pages 7-9 – “[2] <u>Hearing Required</u> ”, ©2016 Matthew Bender & Company, Inc. (a member of the Lexis Nexis Group)	9
4. <u>Texas Rules of Evidence</u> 103(e)	9

OTHER

1. “ <u>The Georgetown Legal Journal Annual Review of Criminal Procedures (2012)</u> ” pages 430-431, 441-442 on entering a Guilty Plea F.R.C.P. Rule 11	10
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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 B 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 A 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 _____ 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 appears at Appendix _____ 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 March 25, 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: April 20, 2021, and a copy of the order denying rehearing appears at Appendix C.

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 _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6th Amendment of the United States Constitution

14th Amendment of the United States Constitution

Federal Rules for Criminal Procedures Rule 11 (b)(2) & (3)

STATEMENT OF THE CASE (Page 1 of 2)

I, Charles Edwin Tumlinson, did plead Not Guilty in cause #50946 in Brazoria County, Texas, but the trial court refused to enter my “Not Guilty” plea and, therefore, entered a coerced “Guilty” plea and also changed my plea to guilty on my plea agreement after I had signed the agreement (Please see trial court plea hearing transcript in Exhibit A, page 11 line 18 and ground # 12 in [22.54] Writ of Habeas Corpus). Also, page 12, lines 10-12, 16-18, of Ground #21. Furthermore, I do have a viable actual innocence claim. And, I have U.S. Constitutional rights to a fair trial by jury to determine the viability of my actual innocence claims. Moreover, I have never received a fair trial by jury to determine the viability of my actual innocence claims. As per my previous petitions and appeals, I have always wanted a fair trial by jury.

First, the trial court changed my plea on the plea agreement to “guilty,” after I had signed the plea agreement. I did not want to change my “not guilty” plea to guilty nor to nolo contendere (no contest). And, my trial counsel did not object to the Judge making these changes after I had signed the plea agreement. I am innocent and I had refused to change my “not guilty” plea. The Court crossed out “nolo contendere” on my already signed plea agreement to involuntarily change my plea to “guilty” on the signed plea agreement. And my appeal attorney refused to address these issues. See the trial judge’s statement on the plea agreement court transcript page 12, lines 10-11, of Exhibit A, “The Court: All right. I’m adding a few things, like crossing out, but nothing changing what you signed.” (See Exhibit A – pg. 12, lines 10-12, 16-18) Plea agreement altered by Judge after being signed – plea is altered on page 3.

Furthermore, according to the U.S. Court of Appeals (5th Ckt) case law and rules, I am entitled to an Evidentiary Hearing, USA v. Birdwell (5th Ckt. #88-4652) and Rogers v. Maggio (5th Ckt. #82-3640). No court has given me an Evidentiary Hearing. Please, either grant me an Evidentiary Hearing or direct the lower court, either the 5th Ckt. or the U.S. District Court, to grant me an Evidentiary Hearing. Thank you! God bless you!

Also, I was on medications; the trial court did not inquire about medications and the trial court did not make an “on-record account” of my medications before entering the (illegally and coerced) guilty plea. The

STATEMENT OF THE CASE (Page 2 of 2)

state agrees that the trial court did not make an “on-record account” of my medications. Additionally, the

State agrees that an on-record account” of my medications is required by law, before entering a guilty plea.

Furthermore, the U.S. Court of Appeals (2nd Ckt.), in U.S. vs Rosillo, 853F.2d 1062, 1066f, states that this is a reversible error, because this violates both the 6th and the 14th amendments of the U.S. Constitution.

Fact: Moreover, the trial court did not make an “on-record” account of my mental health issues, as per my U.S. military discharge paper (exhibit C), “Personality Disorder” (a.k.a. – P.T.S.D.) before entering a plea.

Additional facts: When the Trial Court altered my plea agreement after I signed it, the court altered my plea, against my will, to guilty; and the judge added a case # to my already signed plea agreement (see exhibit A, Transcript page 12, lines 10-12). The plea agreement did not have a case # when I signed it. The case number appears only once and is handwritten. This is the judge’s doing (see exhibit A, page 12, lines 10-12). The trial court judge admits on the record to writing in the case number. Moreover, the plea agreement is titled for the 23rd Judicial District Court and not for the 149th Judicial District court, where the hearing and judge altered my plea agreement after I had signed it (see Trial Court Transcript – exhibit A). Additionally, the Trial Court judge, in the 149th Judicial District Court in Brazoria County, Texas, stated that he was directing “Lacy” (possibly Lacy the district clerk) to further alter my previously signed plea agreement (see Exhibit A Trial Court Transcript page 12, lines 16-18). My trial counsel never objected. I was scared and intimidated and felt threatened and helpless. This is a gross fundamental miscarriage of justice and a gross ineffective assistance of counsel that the appeals courts refuse to hear, review, and correct, which violates my rights in the 6th and 14th Amendments in the U.S. Constitution. But for these errors, the outcome would have been different. I am actually innocent; and, there are more facts that I cannot bring forward without an Evidentiary Hearing and counsel to assist me in doing so.

REASONS FOR GRANTING THE PETITION (Page 1 of 6)

I received ineffective assistance of trial counsel and ineffective assistance of appeal counsel, loss of

Due Process and other violations of my U.S. Constitution's 6th and 14th amendments. These resulted in fundamental miscarriages of justice. Such claims of fundamental miscarriages of justice are grounds for overcoming procedural defaults, including a time-bar under the A.E.D.P.A. (Hodge vs U.S.A., U.S. Court of Appeals-3rd Ckt. (Feb.3, 2009). In Hodge vs U.S.A., petitioner was only seeking a re-sentencing and not an actual innocence claim. (an actual innocence claim underscores a greater miscarriage of justice) The 3rd Ckt. (U.S.C.A.) granted relief to petitioner in overcoming the procedural time-bars, under the A.E.D.P.A. My claims of actual innocence, ineffective assistance of trial counsel and ineffective assistance of appeal counsel, loss of Due Process and other violations etc. are a more serious set of violations of my U.S. Constitutional rights and are a more serious miscarriage of justice. In Bostick vs Stevenson, U.S. Court of Appeals – 4th Ckt., (Dec.17, 2009), a certificate of appealability was granted. The 4th Ckt. Granted relief on overcoming the procedural defaults without a viable actual innocence claim. In Bostick vs Stevenson, “Procedural Posture: Inmate’s habeas [Corpus] petition asserted his counsel was ineffective for not consulting with him about an appeal . . . counsel was ineffective as to the duty to consult about an appeal and habeas relief was proper.” In my case, my appeal counsel stated that he was not appointed to file an 11.07 writ of habeas corpus; therefore, he refused to even consult with me on these issues, including ineffective assistance of trial counsel (I.A.T.C.), (see Exhibit B – letter from my appeal attorney). In Bostick vs Stevenson, “Outcome: The district court’s grant of summary judgment to the [respondent] warden [of “finding the claim was procedurally defaulted”] was reversed. The case was remanded to the district court with instructions that it issue the writ of habeas corpus and order the inmate released from prison unless the State granted him a direct appeal within a reasonable time.”

In Hodge vs U.S.A., “The inmate challenged the trial court’s decision. Inmate whose counsel had failed to directly appeal his life sentence satisfied the cause and prejudice exception to procedural default based on ineffective assistance under the Sixth amendment.”

REASONS FOR GRANTING THE PETITION (Page 2 of 6)

Therefore, herein, I am requesting appealability of the court's decisions on January 17, 2020 be granted concerning my Petition for Writ of Habeas corpus.

Additionally, I am requesting that the court appoint me counsel as well as grant me an evidentiary hearing in these matters, or else direct the U.S. District Court to grant me an evidentiary hearing. I will need more time to file a motion to appoint counsel, as well as, a motion for an evidentiary hearing, (Evitts v. Lucey, Townsend v. Sain, Rogers v. Maggio, U.S.A. v. Birdwell).

Furthermore, I am requesting more time to file the Notice of Appeal and additional motions, etc., because I am without counsel and I am wrongfully imprisoned. Also, I do not have access to a computer, nor access to the internet to assist in filing court documents, etc. And, I do not understand the court's appeal process, procedures, and rules, etc.

I am actually innocent and failure to review my claims will result in a "Fundamental Miscarriage of Justice" and continued violations of my constitutional rights under the 6th and 14th Amendments of the U.S. Constitution. My constitutional rights were impeded by "some objective factor external to my defense."

A procedural default should not bar this Habeas Corpus from being heard in federal court, because there is a substantial claim of Ineffective Assistance of Trial Counsel and in the initial review proceedings there was no counsel or ineffective assistance of counsel in the appeals process (Martinez vs. Ryan, (Supreme Court of the United States – March 20, 2012)). And, in Trevino vs. Thaler, (Supreme Court of the United States – May 28, 2013), "certiorari was granted because in Texas it was highly unlikely that an inmate had a meaningful opportunity to raise an Ineffective Assistance of Trial Counsel claim on Direct Appeal, procedural default did not bar a Federal Habeas Court from hearing it, where initial review in collateral proceedings was ineffective." My attorney on appeal refused to appeal my ineffective assistance of trial counsel claims, including where the trial court erred on entering my plea. See (Transcript – Exhibit A, page 11, line 18) and (Exhibit B – a letter from appeal counsel, page 1 [near bottom]). I had a right, not a privilege, to have my plea

REASONS FOR GRANTING THE PETITION (Page 3 of 6)

clarified and corrected to "Not Guilty," both during the hearing and on appeal. Exhibit B – a letter from appeal counsel, on page 1 (near bottom) shows that my attorney, on Direct Appeal, refused to appeal Ineffective Assistance of Trial Counsel and loss of Due Process. Furthermore, see Irving Magana, Ex parte Garcia, Court of Criminal Appeals of Texas, (2016) where Justices Alcala and Johnson, supported by Supreme Court of the United States in Trevino vs. Thaler (May 28, 2013) and Martinez vs. Ryan (Supreme Court of the United States – March 20, 2012), also see Whitmore vs Texas. When a procedural rule comes in conflict with a fundamental constitutional right, it is clear that the procedural rule must yield. Schlup vs Delo (Supreme Court of the United States), – An actual innocence claim is an acceptable exception to a procedural bar rule. Also, see Hodge vs USA (3rd Ckt) (Feb. 3, 2009) and McQuiggin vs Perkins (Supreme Court of the United States – May 28, 2013. The Supreme Court of the United States stated that a Fundamental Miscarriage of Justice is a type of Actual Innocence Claim.

My Ineffective Assistance of Trial Counsel claims and loss of Due Process claims were never heard nor given meaningful review, and I lost my right to a fair trial. Furthermore, I was denied an opportunity to raise the errors on direct appeal when I was denied assistance of counsel on appeal for new trial. The Supreme Court of the United States agrees that these types of issues give exception to overcome procedural time – bars and qualify for Habeas Corpus relief, Trevino vs. Thaler (Supreme Court of the United States - May 28, 2013), and McQuiggin vs Perkins (Supreme Court of the United States – May 28, 2013) on Writ of Certiorari from the Supreme Court of the United States to the Fifth Circuit U.S. Court of Appeals and the Sixth Circuit U.S. Court of Appeals, respectively.

Furthermore, to be clear, the trial court was required to make an "on record" account of whether or not I was on medication before entering a guilty plea. If the trial court or my trial counsel did not know that I was on medication, the trial court was still required to an "on record" account by inquiring if I was on

REASONS FOR GRANTING THE PETITION (Page 4 of 6)

medication. The trial court failed to insure that my plea was knowingly and voluntarily made, because the trial court did not make an “on record” account of whether or not I was on medication. In addition, my trial counsel was ineffective because he failed to ensure that the trial court made an “on record” account by inquiring if I was on medication before entering a guilty plea. According to the U.S. Court of Appeals (2nd Ckt), in U.S. v. Rosillo, this is a most reversible error because the State agrees that I was on medication at the time that the trial court entered my coerced guilty plea without making an “on record” account; thereby, violating my rights in the 6th and 14th Amendments of the U.S. Constitution. I was heavily medicated at the time, due to my “Personality Disorder,” Anxiety, and P.T.S.D., as documented on my DD-214 Military Discharge papers (Exhibit C), under reason for Honorable Discharge. The trial court did not make an “on record” account of my medical conditions either. So, the U.S. Court of Appeals (5th Ckt.) and the Criminal Court of Appeals of Texas’ decisions are in conflict with the U.S. Court of Appeals (2nd Ckt.) well established case law in U.S. v. Rosillo.

Moreover, the case-law, in the following cases, is relevant to this petition, respectively, Massingill v. State of Texas, Prudhomme v. State of Texas, U.S.A. v. Correa-Torres, Alvarez v. Texas, Evitts v. Lucey.

And, the following case-law and authorities are in reference to Petitioner’s request for Evidentiary Hearing: Blue, Texas Rules of Evidence 103(e), “Texas Criminal Practice Guide” – 5th Ckt. on Evidentiary Hearings.

In exhibit A, attached (in original appeal) pg. 11, line 18, in copy of the court transcript, the defendant's plea of "not guilty. Oh, oh, guilty," is uncognizable. (Uncognizable: incapable of being judicially determined.) Therefore, the court should NOT have entered the plea as "guilty" per F.R.C.P. rule 11(b)(1)(B), and rule 11 (b)(2). Furthermore, this was illegal and in violation of the defendant's U.S. Constitutional rights to a fair trial and due process under the 6th and 14th amendments of the U.S.C.

Uncognizable should not be mistaken for uncogitable or unconscionable, even though uncogitable and unconscionable do apply here-in.

REASONS FOR GRANTING THE PETITION (Page 5 of 6)

For the court to enter a guilty plea under these conditions without "sensitive regard for fairness or justice" is, also, unconscionable. Furthermore, due to the effect of the medication taken by the defendant, the plea was unrecognizable. Therefore, for the court to enter a guilty plea is unconscionable.

(Un)cognizable: 1.) (Not)capable of being judicially heard and determined.

(or) 2.) (Not)capable of being known.

(Un)intelligible: (Not)capable of being understood or comprehended.

An unrecognizable plea is judicially unintelligible; and, an unintelligible plea entered as a guilty plea is a violation of the Federal Rules of Criminal Procedures (F.R.C.P.) Rule 11(b)(1)(B) per "The Georgetown Legal Journal Annual Review of Criminal Procedures (2012)" pgs. 430-431 and is in violation of the sixth and fourteenth amendments of the United States Constitution (U.S.C.).

Also, an unrecognizable plea being entered by the court as a guilty plea creates an involuntary plea by the defendant. And, an involuntary plea is a violation of the F.R.C.P. Rule 11(b)(1)(B) and 11(b)(2) and 11(b)(3) per Geo. L. J. Ann. Rev. Crim. Proc. (2012), pgs. 430-431, 441-442; because "...the constitution requires that a defendant's plea be made voluntarily, knowingly, and intelligently, 'and', additionally, the court must ensure that the plea is voluntary"..." Therefore, this, also, is in violation of the 6th and 14th amendments of the U.S.C.

Furthermore, an involuntary plea is both a compulsory plea and a coercive plea.

Involuntary: 1.) Done contrary to or without choice; 2.) compulsory; 3) not subject to the control of the will.

Compulsory: 2.) Coercive

Coercive: 1.) Serving to Coerce

Coerce: 2.) to compel to an act or choice... Was coerced into agreeing [Definitions per Merriam-Webster's Collegiate Dictionary 11th Edition 2012]

REASONS FOR GRANTING THE PETITION (Page 6 of 6)

Therefore, the court cannot enter a guilty plea for an uncognizable plea, because an uncognizable plea is

incapable of being judicially intelligible (known or determined). And, an uncognizable plea that is entered as a guilty plea by the court is both an involuntary plea by the defendant and a coercive plea as well.

Initially, the court violated the F.R.C.P. Rules 11(b)(1)(B), 11(b)(2) and 11(b)(3) and Texas Criminal Law Code Article 26 and Article 27 on both Not Guilty Pleas and on Guilty Pleas by entering an uncognizable plea, which is judicially unintelligible, involuntary, and coercive, as a guilty plea. This led the court to violate the defendant's 6th and 14th amendment rights in the U.S.C. Specifically, denying the said defendant's rights to a fair and speedy trial by jury and due process through an illegally entered plea by the court and continued ineffective assistance of counsel.

Relief sought in this Petition:

1. Petition for Writ of Certiorari
2. That the Supreme Court of the United States grant my Certificate of Certiorari.
3. Relief on overcoming the procedural defaults, including time – bars and rules, etc.
4. An evidentiary Hearing to establish the facts and expand the record.
5. Appointment of appeal counsel.
6. The Plea Agreement, adjudications of guilt, revocations, and sentencings for Cause #50946 (both counts) in Brazoria County, Texas be thrown out, overturned (vacated).
7. Petitioner's pleas for all charges (counts) in Cause #50946 be corrected and entered as "Not Guilty."
8. That the State's criminal cases in Cause # 50946 be dismissed with prejudice, due to Double Jeopardy.
9. The Court declares my actual innocence and exonerates me.
10. The Court orders my immediate release from prison (Texas Department of Criminal Justice System).