No. 21-5691 ORIGINAL

Supreme Court, U.S.
FILED
AUG 27 2021
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IN THE

SUPREME COURT OF THE UNITED STATES

JUAN GUZMAN ZUNIGA — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN DIR TX. TDCJ RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT of Appeals FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JUAN GUZMAN ZUNIGA TDCJ. # id. 1465196
(Your Name)

Luther Unit, 1800 · Luther Drive A-2-11
(Address)

NAVASOTA, TEXAS 77868.
(City, State, Zip Code)

(Phone Number)

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QUESTIONS PRESENTED

(1) WHETHER HIS PETITION HABEAS CORPUS IS "SECOND OF SUCCESSIVE"?

(2) WHETHER THE PROCEDURAL DEFAULT RULING DECISION BY THE DISTRICT COURT ON PRIOR HABEAS CORPUS RELIEF HIM OF THE "SECOND OR SUCCESSIVE" ISSUE?

(3) WHETHER HIS CLAIM ON HIS NEW WRIT OF INEFFECTIVE ASSISTANCE OF COUNSEL [5]. AS A WHOLE RESERVE A "DE NOVO" REVIEW UNDER THE DISTRICT COURTS RULING TO "SECOND OR SUCCESSIVE"?

(4) WHETHER HIS CLAIM OF NEW LAW; NEW RULE UNDER STATE AND FEDERAL LAW, RELIEF HIM OF THE COURTS OF APPEALS RULING TO "SECOND OR SUCCESSIVE"?

(5) WHETHER A DENIAL OF A CONSTITUTIONAL RIGHT WAS CLEARLY ESTABLISHED; AND IF A CORRECTNESS STANDARD IS APPLICABLE WHERE DUE PROCESS IS AN ISSUE? PROCEDURAL RULING VS. MERIT ON GROUNDS ESTABLISHED.

(6) WHETHER THE COURTS OF APPEAL ERRORED IN FAILING TO REVIEW A PROCEDURAL DEFAULT RULING.

(7) WHETHER THE FAILURE TO REVIEW THE RULINGS OF THE STATES FINDINGS AND CONCLUSIONS OF LAW IN HIS HABEAS CORPUS DEPRIVE HIM OF CONSTITUTIONAL RIGHTS TO BE HEARD ON APPEAL?

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:

RELATED CASES.

	PP.
Supreme Court cases.	
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BAREfoot v Estelle. 103 - SCT 3383	17, 18, 19, 23.
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DRETKE 542 U.S. AT 282 124 S.CT 2564	24
Hinton v Alabama · 134 S.CT 1081	9.
HOHN v United States 524 U.S 231 (1998)	2, 20, 21
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MARTINEZ v RYAN · 566 U.S. 1, (2012)	9.
McKESKEY v Zant 499 U.S 467; 111 S CT 1454	10.
MILLER-EL v COCKRELL (2004) 404 U.S) 123 S.CT 1029 (2003)	3, 13, 15, 16
MELENDEZ DIAZ v Massachusetts · 129 S.CT 2577 (2009)	10
PICARD v CONNOR 404 U.S 270, 275, 92 S.CT 509, (1971).	2
POINTER v TEXAS · 83 S.CT 1065 (1965)	10.

CONT:

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Trevino v. Thaler. 449 Fed Appx. 415 (2013)	9.
Trevino v. Thaler 133 S.Ct 1911. (2013)	9.
Miller v. Johnson. 537. U.S. at 336, 123 S.Ct 1039.	23, 24.
Burton v. Stewart. 549. U.S. 147, 152 (2007)	6, 11, 12, 14, 22.
Tennard v. Dretke. 542. U.S. 274, 282 124 S.Ct 2562, 69 (2004)	23.
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Larry v. Dretke 361. F3d. 890, 93 (5th Cir 2004)	20
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6th Amendment 1- 24- PD
14th Amendment 1- 24- PD.

Federal statutory Provision

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PETITION FOR A WRIT OF CERTIORARI

PETITIONER. JUAN GUZMAN ZUNIGA OR A PRISONER PRO/SE, IN the TEXAS PRISON Respectfully Petitions; UNDER ID # 1465146 Now here IN AS PETITIONER – APPELLANT; PETITIONS FOR A WRIT OF CERTIORARI, A REVIEW ON the JUDGMENT OF the FIFTH CIRCUIT COURT OF APPEALS And United States District COURT denial of Certificate of Appealability.

OPINIONS Below

THE Following opinions set forth within the proceeding of Previous Habeas Corpus: Are now being Respectfully Requested to be supplemented in to the Records. this opinions have been Entered in Previous Proceeding in A MOTION 59(e). in its Entirety in cluded. opinion in Denial of 60 B motion by the federal COURT on 2014. August 27. USDC NO 5:11-CV-241 And. opinion in SA-11-CA-241-XR N SN. of 10/10/11... this opinions Are pertinent here to support his case.

the following Exceeding opinion pertain to the claims in this WRIT- And follow in the form. Attached.

Respectfully. Petitioner Gives Notice to the Court that He is not a License Attorney, and Does not hold Knowledge of the law and craftness to pleadings such as from a Ripped Attorney. And Respectfully ask not to be held to the stringent standard, applied to Attorney of law. See United States vs Haines 404 U.S. at 520, 92 S.Ct 594. - -

Statement of Jurisdiction

The District Court and the Courts of Appeals as well as this United States Supreme Court hold jurisdiction. To Review a Request for Certificate of Appealability. - See Hohn v U.S. 524 U.S. 231 (1998) Pursuant to 28 U.S.C. § 1254 (1). the United States Supreme Court has jurisdiction on Certiorari, to review a denial of a Request for certificate of Appealability by a Circuit Judge or panel of a federal Court of Appeals.

Constitutional And Statutory Provisions Involved

Petitioner met the Requirement, Provision set forth to satisfy substantiative equality. He has presented fairly under Picard v Connor, 404 U.S. 270-275 78, 98 S.Ct. 509 30 L.Ed. 2d. 438 (1971). Also See Lombardi vs Wainwright 513 F.2d 277 (5th Cir 1975). His Right as a State Prisoner to seek federal Habeas

corpus Relief is guaranteed in 28 U.S.C.S § 2254. The standard for Relief under "AEDPA" is set forth in 28 U.S.C.S. § 2254 (d)(1),(2)(e)(i).

STANDARD of REVIEW ON Denial of Certificate of Appealability

In Miller-El vs Cockrell 537 U.S. 332, 123 S.CT. 1029 (2003) This court clarified the standard for issuance of a certificate of appealability [Here-after "COA"] 28 USC § 2253(c) ... A prisoner seeking COA need only demonstrate a; "substantial showing of a constitutional right denial", 1. Petitioner satisfies this standard by demonstrating that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further ... We [this court] do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petitioner's petition for Habeas Corpus. Indeed, a claim can be debatable even though, every jurist of reason might agree, after the COA has been granted and the case has recieved full consideration, that petitioner will not prevail.

Id. 123 S.CT 1038 [Citing] Slack vs McDaniel 529 U.S. 473-484 (2000).

STATEMENT of THE CASE

Petitioner was convicted by a Texas Court in a jury trial in the 186th Judicial District Court from San Antonio, Texas; of one, Sexual Assault by physical force and violence. As shown here after in a Bill of Indictment under, Texas Penal Code 22.011(A); 22.011 (b)(1). A number of enhancement were found... Petitioner was found guilty by jury; sentence to 30 years by Trial Judge.

STATEMENT of fact (Pertinent)

. The incident occurred in Petitioner's Residence in San Antonio, Texas on 4/23/2006. The police contacted petitioner at the Residence...

on April 24 2006 - Police, Lab forensic were allowed to enter and perform an investigation, where evidence was recovered.-
A Sexual Assault Nurse Examiner performed further investigation an gathered an obtain evidence and learned the following ---

Reasons for Granting The Writ
Arguement Summary

The following factors were presented in this case:

(1) "One wine bottle" not recieved full analyzes by crime lab tech for signs of DNA identification ...

(2) Same Nurse Examiner investigator siege evidence ... containing DNA matter identified as unspecified substance of a genetic matter on internal an external area of petitioner under garment..

(3) Police sieging evidence obtain by same S.A.N.E. Nurse Expert investigator consisting and containing D.N.A. material evidence on clothing of complainants pants, crotch, under-garment, where at the very least is a product of negligence by police lab technicians for id. D.N.A. Testing.

(4) Where this evidence was mitigating evidence pertinent for the defense

(4) Where in the absence deprived petitioner ability to corroborate his testimony on the stand - to consent; and no sexual penial intercourse; pertinent to proof oral sexual relations was consented.

(5) Once this evidence was excluded, it was, and has been impossible, for petitioner to obtain and challenge own evidence introduced at trial by state attorney.

(6) Because; of counselor [5] negligence the strenght of case became stronger at its weakous term. Where the excluded evidence the states theory to conduct would of been impaired--

by. major contradiction. against. states. testimonial evidence

(7) where the exclusion of the expert witness. "Sexual assault nurse examiner" was. a chief. neglect. by. counselor [5]. that. if. not excluded would of purge. the [prosecutor's] prosecutions. state. witness [5]. proving. inconsistence, in there testimony used. to. convict. by lack of credible motive.

Petitioner claims. that. his. writ no: 20-50034; 28 USC. no. 5:19-cv-1417, no. 5A-19-CA-01417-YR. is. a. New writ, and. not. "second or successive"... Slack vs. McDaniel 528. U.S. 473, 483-84 (2000) see Appendice A.

The fifth circuit court affirmed. the District courts. of the Western District dismissal order under 28. USC. § 2244(b)(3). Appendice B. of 12/10/19. [12/10/19]. further more the fifth circuit court went forth. and. issued order granting. leave to submit. motion. for reconsideration. - ordered denying. the motion. see Appendice E. Petitioner went forth. to ask the fifth. circuit court of appeals. for review of trial court state. records and transcript. the court claimed they. had no access to transcript./state court records. on appeal see Appendice G ascerting. that his. request need be addressed to the District court. After the. District courts. denying. Habeas corpus relief. under 28 USC 2244(b)(3). Appendice B. Petitioner pursued to. bring. life to his. federal new writ; to no. avail: the District court denied Rule-59(e) under federal Rule of Civil Procedure. and was. dismissed and denied C.O.A. to the instant 59(e) claim. see Appendice C. in good faith. seek to have the. proceeding. amended/supplemental. with briefing. the. District court denied his. pleading. and again. went forth. and denied him. C.O.A. to his. motion. see Appendice (d).

Petitioner found it necessary to request access to trial state court records / transcripts on appeal. the District Court denied him relief. SEE Appendix E.

Petitioner asserts in pursuant to Miller-El v. Cockrell 537 U.S. 322. 123 S.Ct 1029 (2003) He will show this court that a constitutional right has been denied. And claims this is a Slack v. McDaniel case: 529 U.S. 473. (2003).

In his contension he shows claims that were designated to have controverted, unresolved facts that are material to the legality of Petitioner's imprisonment. the need be resolved by the judicial court of the 186th District Bexar County, Tex. The Texas Court of Criminal Appeals. The Highest court in Texas denied without written order the Habeas Corpus. The writ court presented on 9/5/19. SEE Appendix H and denial on the findings of the trial court without a hearing. SEE Appendix I

Petitioner argues that his writ civil no. SA-19-CA-01417-XR no: 20:50034 under cause no: 2006-CR-5239. is not "second or successive" under Burton v. Stewart 549 U.S. 147, 152 (2007); In Re Campbell., 750 F 3d, 523, 529, (5th Cir 2014). And claim this case's are not controlling law pursuant 28 U.S.C § 2244(b)(3). SEE Appendix B.

Hence forth ascertains the state court records and appellate records. Zuniga v. State no: 04-07-729 CR., 2008 WL 416-3224.. not designated for publication; SEE SA-11-CA 241 XR-MSM., the Highest court in Texas Response by Gregg Abbott, Att-Gen. And SEE Zuniga v. Thaler. No: 5:11-CV-0241 XR.

where proof shows that his prior writ never reached jurisdiction neither in state appellate level nor federal dist-rict court. the prior writ was reviewed under the merits of time bar federal law 28 U.S.C § 2244(b)(3). And out of...

Compliance under State statutory. Rule 73.1. Texas Rules of Appellate Procedures. Aside from the findings of the State Writ Court the 186th. Judicial District Court; San Antonio Texas . . .

Further more petitioner claims that because of a different judgement set forth. His first writ is claimed as if it does not exist.

Petitioner ask this court to observe the writ courts of the 186th. Judicial District Court orders of Designated issues. there set forth laws and error of appeal. where the prosecution failed to respond. Because the court; did not issue orders for the prosecution to respond too.

The court issued three (3) orders as shown by Appellate Records: No: 2006-CR 5239-W2. orders for Defense Counsel of Trial; orders for Appellate Counsel Angela J. Moore; orders for Michael D. Robbins. Appellate Counsel under Ineffective . . . Assistance of Counsel; under this Designated orders said by Judge Jefferson Moore. the first order shown is (A) for prosecutorial misconduct.

Instead the Writ Judge responded for the state prosecution in Ground one. - The prosecution - in joint with the trial judge relied on the judge to act; A constitutional violation under Art 11.07. . Art 11.07 (c), 11-07 (d). . To acclaimed grounds under statutory new rule Art 11-073 sub sec Art 11-0731 - which was set law to his new writ. . The states violation, is said to believe - to be corrected by state Judge - A clear violation of clear establish state and federal law. 28. U.S.C § 2254. (b)(1)(A)(B)(i).

The history of this case petitioner has created shows numerous procedures - from the start under previous Appellate procedures No. 04-07-00729-CR.; by Angela Moore; No. 04-09-00114 CR. pro/se denied.; No: 04-16-00484-CR dismissed as moot. . .

No: 04-17-00116 CR. denied. Pro/se.

The following procedure number 04-17-00296 CR was set aside. Clerical error: Cause No: 04-17-00370-CR. Appeal was denied. this appeal was a denial of effective assistance of counsel because the DNA procedure was never ruled on by the Court.

PDR. 0152-18 denied.

A Judgement was issued of 1/3/2018. Mandate ordered 7/26/18 Judge. Irene Rios. order denying. Rehearing. Issued on 2/15/18 order deny. Reconsideration. Issued. 2/15/18 by Judge Irene Rios. Cause No: 04-17-00635-CR Appeal was Anders Brief.

The Appeal was ordered Dismissed for Lack of jurisdiction 11/31/18. the Appeal Court of the Fourth Court of Appeals made an error of Appeal. where they failed to signify. a motion for DNA Testing. which was never ruled on by the Court. there were several orders issued in his first Collateral Proceeding for DNA Testing. But never was a ruling on first DNA procedure. this issue was mandamus by Petitioner under. No-04-16-00484-CR. mandamus was dismissed as Moot.

the motion for DNA Testing was never address an order denying the proceeding was never issued. As the Court claims in its memorandum opinion of 11/31/18 under 04-17-00635-CR.

the previous memorandum opinion under 04-17-00370 CR. And that proceeding judgement was set on a successive motion for DNA Testing; Also see No 04-16-00484-CR for the authority of judgment.

Petitioner clears [illegible] a confusing issue. Cause No. 04-17-00635-CR is appeal on motion for New Trial. not on a motion for DNA Testing.

Petitioner has diligently and promptly created his case.....

where the ineffective performance of counsel infringed and deprived. Defendant of TRIAL; A fair TRIAL by. [Confrontation] confrontation - the Confrontation clause provides protection for defendant at TRIAL. - SEE U.S. vs OATES 560 f2d. 451, 71; -- QUEZADA, 754 f2d at 1194.

This inadequate; and ineffective assistance continued through out this case and its history. SEE Ibarra vs Thaler 687 f3d. 222 (2012). Petitioner should receive an opportunity to cross examine [U.S. CA. Const Amend 6] -- SEE Melendez v Diaz vs. Massachusetts. 129 S.CT 2527. (2009) [certiorari]

where the Sixth Amendment to the United States Constitution [is] made applicable to the states via the fourteenth Amend - SEE Pointer v Texas. 85 S.CT 1065 (1965).

Petitioner contends he has shown proof to support his ineffective claim in his previous and present habeas corpus. while it is true, that a standard to the "cause; prejudice". has been dealt with - SEE McCleskey vs Zant 499 U.S 467, 111 S.CT 1454 (1991), and a more important issue to consider. and the context in which that standard was developed is applicable.

This his New writ shows proof to support that "A final dispositions constituted in Art 11.07 §(4)(a) is applicable to over turn a judgment to "subsequent" or "successiveness".

Petitioner argues that his New writ no: 20 500 34.; U.S.DC no. 5-19-CV-1417.; civil no SA-19-CA-01417-XR is not "Second or Successive" under Magwood v Patterson 130 S.CT. 2788 (2010) -- Strickland v Thaler 701 f3d 171 (2012) his claims have been exhausted through state Remedies, provisions under New Rules. T.R.A.P. Art 64.01. Act 2015 84th leg. ch. 70 S.B. 487, Art 11.073. Amended 2015 (H.B. 3724).

In Lew of the federal District Courts judgment under Burton v Stewart 549 U.S. 147-152 (2007); In Re Campbell 750 f2d 523, 529 (5th Cir 2014) for failure to obtain authorization under 28 USC 2253(c)...

Petitioner Re-urges his previous contension, and respectfully ask the court to supplement or amend, the judgment of 11th Appellate Court - In Reference to Cause No 2006-CR-5239. 2006-CR 5239 W-1; (SA-1) Civil Action No SA-11-CA-241 YR N.S.H; U.S.D.C 5-11-CV 241. And this court judgment to the finality of that proceedings which is pertinent to this claim of not "Second or Successive", where proof supports his contention, that his previous proceeding was judge under procedure default AEDPA (1996 Act) 28 USC 2244(d) and Texas Rules of Appellate Proc Rule 73.1. On those merits; and not on the merits of the grounds claimed that Habeas Corpus [Writ].

Petitioner claims that the Highest Court of Criminal Appeals of Texas bounded itself to the Trial Courts finding in this New Writ; under Texas statutory Law Art 11.073 to the Evidence now inserted an offered. See Ex parte Torres 943 SW 2d 469. To the subsequent writ. [Judge Keller J.] where the judgement of the District Court Civil Action No 5:19-CV-1417 YR was ruled "Second or Successive" - In violation to 28 USC 2253(c) - 28 USC §2244 (b)(3)--

See: Slack v McDaniel 529 U.S. 473, 487 (2000) - See In Re Grasey 116 f3d, 1051, 1052 (5th Cir 1997) - Held, A Petitioner who seeks to Re-file habeas application after a prior dismissal with and or without prejudice for failure to Exhaust State Remedies is not required to comply with 28 USC §2244(b)(3)(A), when he returns to federal courts after Exhausting--

-- those claims; Petitioner comfortably ascerts; that when the District Court clear stated; in its judgement on a 60(B) proceeding no: 5:11-CV 0241-PR.. granting Petitioner to proceed without a pre-certification under 28 USC § 2244 (b)(3). Is sufficient to grant relief. In Petitioner claim, that his writ is not successive nor second, but is a new writ. SEE: Strickland vs Thaler 701 f3d. 171 [2012] -- Maqwood v Patterson 130 S.Ct 2788, 2895 - 177 L Ed. 2d. 592 (2010).

Where "Second or Successive" in time, but rather not refered to all § 2254. application -- where its a term of art that takes § 2012 U.S. App. Cons 7] its full meaning from the federal court case law. Including decisions, pre-dating the enactment of statutory law [AEDPA Act of 1996]. SEE: Graham vs Johnson. 168 f3d 762, 778 (5th Cir 1999); Citing Rose Lundy 455 U.S. 509, 522 - 102 S.Ct. 1198 L.Ed. 2d 379 (1982) " because Exhaustion is based on Comity rather than jurisdiction.. there existed no absolute bar to federal courts consideration of unexhausted habeas corpus application....

Petitioner objects to the Burton authority over his writ. because his writ is a new writ under Maqwood vs Patterson 130 S.Ct 2788, 2895. 177 L.Ed. 2d 592 (2010) -- Strickland vs Thaler 701 f3d. 171 (2012)...

In Burton the Court claimed the Petitioner did not raise the unexhausted claims in his application. 2d at 155. The Court in Burton noted that the first application was adjudicated on its merits, and held that the second application was "second or successive" and remanded the Burton case back to the District Court for it to dismiss for want of jurisdiction: Id. at 155; 57.

Petitioner ascerts - it is not so in his cause SA-11-CA-241-PR NSH. the entire Habeas Proceeding - State and federal were dismissal in federal with prejudice under 28 USC..