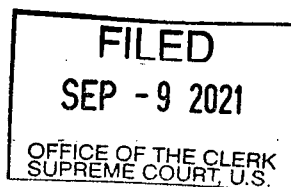


No. 21-5742

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

Steven Wayne Isbel — PETITIONER  
(Your Name)

vs.

Bobby Lumpkin — 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

Steven Wayne Isbel # 01859521  
(Your Name)

815 12<sup>th</sup> Street  
(Address)

Huntsville, Tx. 77348  
(City, State, Zip Code)

n/a

(Phone Number)

## QUESTION(S) PRESENTED

### Question One:

Whether the 5<sup>th</sup> Circuit Court of Appeals has entered a decision that is in direct conflict with the United States Supreme Court precedent and in conflict with other United States Courts of Appeal on the same important matter,

Mainly the duty of the trial court to inquire into a conflict of interest brought to its attention by a timely motion to dismiss court appointed attorney filed by a defendant, and also

the obligation defense attorneys have upon discovering a conflict of interest to advise the court at once of the problem.

## Questions) Presented ( continued )

Question Two:

Whether Due Process requires federal courts to review Ineffective Assistance of Trial Counsel claims de novo, when proceedings in the State of Texas fail to provide a meaningful corrective process such that those claims are not fully and fairly adjudicated,

or whether the Supreme Court should exercise its equitable power over habeas corpus to require federal courts to review ineffective Assistance of Trial Counsel claims from Texas de novo rather than under 28 U.S.C. 2254 (d)(1).

## 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

Texas v. Isabel 184<sup>th</sup> Dist. Court Cause no. 1322305  
Isabel v. State (Tex. App. - Hou. [14<sup>th</sup> Dist.] 5-15-2014 Pet. ref'd)  
Case no. 14-13-00450-CR

Ex Parte Isabel WR-85,356-01 Texas Court of Criminal Appeals  
Isabel v. Davis U.S. Dist. Court of Texas Case no. 4:16-cr-02836  
Isabel v. Davis 5<sup>th</sup> Circuit of U.S. Case no. 18-20665  
Isabel v. Lumpkin 5<sup>th</sup> Circuit of U.S. Case no. 19-20824

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	<i>United States Court of Appeals for the Fifth Circuit decision No. 19-20824</i>
APPENDIX B	<i>United States District Court for the Southern District of Texas Decision Case No. 4:16-CV-02836</i>
APPENDIX C	<i>Docket Sheet for Case No. 4:16-CV-02836</i>
APPENDIX D	<i>Ex Parte Isabel WR-85,356-01 and C.R. Vol. 1</i>
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

<i>Coleman v. Thompson</i> , 501 U.S. 722 (1991)	14
<i>Cuyler v. Sullivan</i> , 446 U.S. 335 (1980)	8
<i>Garner v. State</i> , 864 S.W.2d 92 (Tx.App. 1992)	9
<i>Green v. Trice</i> 132 S.Ct. 38 (2011)	15
<i>Holloway v. Arkansas</i> , 435 U.S. 475 (1978)	8-10
<i>Martel v. Clair</i> 132 S.Ct. 1276 (2012)	8
<i>Salts v. Epps</i> , 676 F.3d 468 (5th Cir. 2012)	9
<i>Martinez v. Ryan</i> 132 S.Ct. 1309 (2012)	13
<i>Mathis v. Hood</i> 937 F.2d 790 (2nd Cir 1991)	9
<i>Trevino v. Thaler</i> 133 S.Ct. 1911 (2013)	11, 12

### STATUTES AND RULES

28 U.S.C. § 2254  
(d) (1)

3, 11-14

### 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 \_\_\_\_\_; 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 \_\_\_\_\_; 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 n/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 \_\_\_\_\_ 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 6-24-2021.

☒ 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 \_\_\_\_\_.  
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

28 U.S.C. § 2254 State custody; remedies in Federal courts.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim --

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

or . . .

## STATEMENT OF THE CASE

- On January 18, 2012 Steven Wayne Isbel (Isbel) filed a motion to dismiss his court appointed trial attorney based on problems he was having with his attorney that ~~he~~ required Isbel to file a complaint against his trial attorney with the office of Chief disciplinary Counsel. (Appendix D pg 10-11; Habeas Record, Ex Parte Isbel WR, 85,356-01; also C.R. Vol. 1 Pgs. 27-35)
- The trial Judge received and initialed the motion and filed it with the court on January 18, 2012. (Appendix D pg. 10; C.R. Vol. I pg. 27)
- The trial Judge took no other action.
- Isbel's trial attorney Jules Johnson never notified the trial court about the possible conflict of interest that had arisen when Isbel filed complaints about him with the office of Chief disciplinary Counsel.

## Statement of The Case (Continued)

- Isbel in his state writ of habeas corpus raised an ineffective assistance of trial counsel (IATC) claim based on when the trial court did not initiate an inquiry into the conflict of interest raised by Isbel's timely motion to dismiss court appointed attorney in which he outlined his complaints that he had filed with the office of the chief disciplinary counsel. Also when his attorney did not advise the trial court that a conflict of interest had arisen by Isbel filing a complaint with the office of Chief Disciplinary Counsel against him. (Appendix D pgs. 1-11; also Ex Parte Isbel WR-85,356-01 pgs 209-219)

- These claims were denied in Isbel's state post-conviction proceedings. (Ex Parte Isbel, WR-85,356-01 Texas Court of Criminal Appeals)

## Statement of The Case (Continued)

- Isbel raised these same claims in his federal writ of habeas corpus. (Docket Entry No. 1 pg. 17 Case No. 4:16-cv-02836)
- On September 20, 2018 the claim was erroneously ruled procedurally defaulted for failure to exhaust. (Docket Entry No. 44)
- On June 12, 2019 the United States Court of Appeals for the 5<sup>th</sup> circuit denied Isbel's Motion for COA disputing the procedural default on this claim.
- On June 12, 2019 the U.S. Court of Appeals for the fifth circuit denied Isbel a COA based on the doubly deferential review that applies to Strickland v. Washington, 466 U.S. 668 (1984) Claims under 28 U.S.C. 2254(d)(1).

## Statement of The Case (Continued)

- On June 12, 2019 the U.S. Court of Appeals for the fifth circuit denied Isbel a COA on whether 28 U.S.C. 2254 (d)(1) violates separation of powers principles.
- On October 29, 2019 Isbel filed a Rule 60(b) motion explaining that he did exhaust this Ineffective Assistance of Trial Counsel claim and cited to the record filed by the State in the docket.
- On December 10, 2020 the district court denied the claim on the merits that it had previously ruled procedurally defaulted, and once again applied 28 U.S.C. 2254 (d)(1).
- On June 24, 2021 the U.S. Court of Appeals for the 5th circuit denied a COA on this final claim.  
Case No. 19-20824 Isbel V. Lumpkin.
- This writ of Certiorari follows.

## REASONS FOR GRANTING THE PETITION

### Question One:

The Fifth Circuit decision ignores Supreme Court precedent on when a trial court should inquire into a conflict of interest when it is brought to its attention. This decision ignores its prior case law and creates a split among U.S. Circuit Courts.

In the following cases decided by the

Supreme Court - *Holloway v. Arkansas*, 435 U.S. 475 (1978) and *Cuyler v. Sullivan*, 446 U.S. 335 (1980) it outlines the duties that a court should inquire into a conflict of interest when it is brought to their attention by a timely motion to dismiss counsel. The Supreme Court has also recognized that all Circuit Courts were in agreement with this at one time. "As all circuits agree courts cannot properly resolve substitution motions without probing why a defendant wants a new lawyer." *Martel v. Clair*, 132 S.Ct. 1276, 1288 (2012)

## Reasons For Granting The Petition (Continued)

### Question One: (Continued)

Prior 5<sup>th</sup> Circuit case law has followed this in *Salts v. Epps*, 676 F.3d 468, 480-481 (5<sup>th</sup> Cir. 2012) the 5<sup>th</sup> Circuit held that a motion objecting to a conflict of interest triggers a duty to inquire by the trial court and if the court fails to investigate reversal is required under *Holloway v. Arkansas*, 435 U.S. 475 (1978).

This decision also creates a split with the 2<sup>nd</sup> Circuit on a case with similar facts that even a Texas State court of appeals agreed with, See *Garner v. State*, 864 S.W.2d 92 (Tex.App.-Houston [1<sup>st</sup> Dist.] 1992) citing *Mathis v. Hood*, 937 F.2d 790, 795-796 (2<sup>nd</sup> Cir. 1991) "A disciplinary proceeding brought by a client against counsel creates an actual conflict of interest" and if this conflict is brought to the courts attention by a timely motion to dismiss counsel, the trial court should have

## Reasons For Granting The Petition (continued)

### Question One (continued)

initiated an inquiry into Isbel's motion to dismiss counsel.

Isbel's trial attorney had a duty to notify the trial court of a conflict of interest when Isbel filed a disciplinary proceeding against him. "[D]efense attorneys have the obligation upon discovering a conflict of interest to advise the court at once of the problem."

Holloway v. Arkansas, 435 U.S. at 485.

This issue is of extreme importance as a defendant is entitled to conflict free representation under the 6<sup>th</sup> Amendment. A defendant should be able to be heard before trial when he raises a claim of a conflict of interest before trial that is what the duty to inquire by the judge is to protect.



## Reasons For Granting The Petition

### Question Two:

This issue is of importance as it affects an entire class of inmates who must after their direct appeal fend for themselves when trying to assert they had Ineffective Assistance of Counsel during trial. The few that make it to federal court with any Ineffective Assistance of Trial Counsel claims intact should be able to receive de novo review as it is the Due Process interest in full and fair proceedings that should override any protections the State receives from 28 U.S.C. 2254 (d) (1).

The Supreme Court has used its equitable power to limit the application of the procedural default doctrine to Texas inmates who are forced to fend for themselves, see *Trevino v. Thaler*, 133 S.Ct. 1911 (2013). Then it ought to be

## Reason(s) For Granting The Petition

### Question Two: (Continued)

understood to similarly restrict the application of 28 U.S.C. 2254(d)(1) to Ineffective Assistance of Trial Counsel ~~the~~ Claims that come from Texas for the same reasoning.

In Texas neither direct appeal nor a writ of habeas corpus provides a meaningful opportunity for a pro se non-capital defendant to present an ineffective assistance of trial counsel claim. See Trevino v. Thaler, 133 S.Ct. 1911, 1921 (2013). "We believe that the Texas procedural system - as a matter of its structure design, and operation - does not offer most defendants a meaningful opportunity to present a claim of ineffective assistance of trial counsel on direct appeal."

## Reason(s) For Granting the Petition

### Question Two: (Continued)

In *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) the Supreme Court also recognizes that a Pro se defendant will have difficulties presenting an ineffective assistance of trial counsel claim in collateral proceedings. "Without adequate representation in an initial-review collateral proceeding, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-at-trial claim." *Martinez v. Ryan*, @ 1312.

28 U.S.C. 2254 (d)(1) is a relitigation bar and since Isbel has not had a full and fair opportunity to litigate his ineffective assistance of trial counsel claims, then review of them should be *denovo*. "if a State desires to remove from the process of direct appellate review a claim or category of claims, the Fourteenth

# Reasons For Granting The Petition

Question Two:  
(Continued)

Amendment binds the State to ensure that the defendant has effective assistance of counsel for the entirety of the procedure where the removed claims may be raised." *Coleman V. Thompson*, 501 U.S. 722-773-774 (1991).

Since Isbel has not had a full and fair opportunity to vindicate his ineffective assistance of trial counsel claims the " State, which is responsible for the denial as a Constitutional matter, must bear the cost of any ... harm to state interest that federal habeas review entails. " *Coleman V. Thompson* at 754.

28 U.S.C. 2254 (d) (1) directs federal Courts to respect the finality of State convictions. But the two elements that determine finality are

# Reasons For Granting The Petition

## Question Two: (continued)

missing when a prisoner in Texas:

- Cannot present his ineffective assistance of trial counsel claims on direct appeal;
- which denies them a chance to receive a merits review of his ineffective assistance of trial counsel claims by petitioning for a writ of Certiorari from his direct appeal to the Supreme Court.

" Finality occurs when direct state appeals have been exhausted and a petition for a writ of Certiorari from this Court has become time barred or has been disposed of." Green v. Trice, 132 S.Ct. 38, 44 (2011).

For these reasons Isbel should have these claims reviewed de novo.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Steven Wayne Blue

Date: September 9, 2021