

No. 21-5745

ORIGINAL

Supreme Court, U.S.
FILED

JUL 26 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO TURCIOS, PETITIONER

VS.

BOBBY LUMPKIN, DIRECTOR, TDCJ RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO

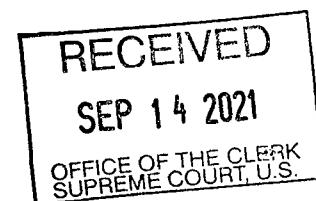
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JUAN FRANCISCO TURCIOS

3 JESTER ROAD JESTER III TDCJ

RICHMOND , TEXAS 77406-8544



QUESTION(S) PRESENTED

(1). Was reversible error, committed pursuant to; STRICKLAND vs. WASHINGTON: MAPLE vs THOMAS: UNITED STATE vs. HILLSMAN ;, when trial counsel abandoned petitioner, during a critical stage's of the trial, "Sentencing, filing a Notice of Appeal and Motion for a New trial?".

(2). Did the trial Judge breached the " Approved, and Accepted, by all parties including Trial Judge 'plea agreement' (contractual), for no more than TEN years 'deferred adjudicated probation'", in direct conflict with precedent case's?.

PERKINS vs. THIRD COURT OF APPEALS: LAFLER vs. COOPER:
MISSOURI vs. FRYE: THOMAS vs. STATE.

(3). Was petitioner's plea agreement for TEN years, altered, and or modified the contract to 20 years when the STATE or someone with access crossed-out TEN years without the approval of all parties, in violation of petitioner's 6th, and 14th amendments of the UNITED STATES CONSTITUTION?.

(4). Was trial counsel acting in petitioner's best interest when submitting TWO "conflicting affidavits" in violation of petitioner's 6th and 14th amendments to the UNITED STATES CONSTITUTION, and in conflict with precedent case law?.

SHERMAN vs. STATE: DAVIS vs. ALASKA.

IDENTIFICATION OF PARTIES

State of Texas Counsel name in address served:

Mr. Jon Rodney Meador attorney, Karen S. Mitchell attorney,
Office of the Attorney General : Ken Paxton 300 W. 15th St.
Austin ,Texas 78711-2548

TRIAL COURT AND MEMBERS

Trial Counsel: Paul Johnson, 900 Jackson Street Ste.650
Dallas ,Tx 75202,counsel for defendant.

Ms.Chris Hawkins attorney for the Dallas District Attorney,
133 . Riverfront Blvd. Dallas ,Tx 75207

Honorable Judge Teresa Hawthorne 203rd Judicial District
Court. ,Dallas County ,Tx.,133 .Riverfront Blvd.Dallas,Tx.

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PETITION FOR WRIT OF CERTIORARI
IN THE SUPREME COURT OF THE UNITED STATES

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JURISDICTION AND PROCEDURAL HISTORY

Petitioner appear in trial for the first time on April 09, 2012, after five minutes of pressure he plead guilty in exchange for 10 years defered adjudicated probation. *Appendix A-3*
On April 27, 2012 the court sentence petitioner to a void sence of 20 years, counsel left the court-room before judge pronounce the sentence.

Petitioner filed his first notice of appeal on April 30th, 2012, (it is noted that the date stamp is crossed-out). *Appendix A-9*
Trial court appointed Matthew J. Kitta as appellate counsel on December 3, 2012, the Dallas Fifth District Court of Appeals affirmed petitioner's conviction on October 7, 2013.
On November 13, 2013 petitioner filed enbanc, but was denied.
On February 13, 2014 petitioner filed Petition for Discretionary Review (PD0049 & PD0050), the court of criminal appeals denied on April 2, 2014.

A petition for writ of certiorari was never filed.

Petitioner's conviction became final on July 01, 2014.

On November 24, 2014 petitioner filed application for State habeas in which the Texas Court of Criminal Appeals assigned ancillary numbers (70886) WR-83,155-1 & WR-83,155-2(70896).

On June 3, 2015 the Court of Criminal Appeals remand petitioner's cause's back to the trial court to hold a hearing, however, the court opted for (paper hearing) instead of lived hearing. *Appendix A-10*

The trial court response was as follow(70896) September 21, 2015. And cause no.(70886) on January 4, 2016.

On June 22, 2016 the Court denied relief (without written order).

On September 25, 2016 petitioner filed his pro se petition for Federal Habeas under 28 U.S.C § 2254, Honorable Judge David C. Godbey, preceded.

On August 31, 2018 Judge Godbey accepted findings and recommendation denying relief, and issuing of C.O.A..

The court acknowledge that tampering in the mailing system was the fault for not receiving the timely filed petitioner's objections, however, the judge find the F.C.R. without error and still denied relief. - Appendix B-3

On December 2018 petitioner filed the timely application for C.O.A. on January 2019, petitioner paid the required filing fee of (\$505.00) dollars to proceed. "Appendix B-4"

The Fifth Circuit remanded the case back to the District court to ruled on the pending motion 60(b)(6), the court denied relief and C.O.A..

On December 28, 2020 the Fifth Circuit under a single judge rule, denied issuing C.O.A and thereafter relief, petitioner, then filed motion for enbanc, which is denied on February 24, 2021, petitioner received notice in the mail on March 05, 2021, . Appendix "B-5"

Petitioner filed his pro se in forma pauperis writ of certiorai on July 23, 2021.

IMPORTANT NOTE: On April 08, 2021 petitioner filed a writ of mandamus to enforced the plea bargaing agreement in the Texas Court of Ciminal Appeals enforcing the 10 years, however, the court has not yet render an answer, or order.

On January 06, 2019 petitioner paid the fee, and filed application for C.O.A in the U.S.District Court.

Petitioner file an additional addendum with the Fifth Circuit due to petitioner unskilful and unknowlege in the law,,the Fifth Circuit on 2020 remanded the case to the District Court to address the issue of the motion 60(b)(6) at which under ruled 7 of 28 U.S.C§2254 petitioner filed copie of both plea agreements, and conflicting trial counsel affidavits, even then Court denied relief.

Now was part of the record, but on December 28, 2020 a single judge denied relief, on January 7, 2021 petitioner filed a motion for time extension to filed an enbanc, the court extended the time, however on February 24, 2021 the court denied enbanc, petitioner received the court ORDER on March 5, 2021,..

Due to the ungoing Covid crisis this court extended the time to 150 days,, and by the rules of this court petitioner must submitt a writ ten days before the time allowed.

Petitioner herein is submitting his writ, and ask this court for time extension if required

The appendix for this portion are().

Petitioner once more request in a for of relief, which he is entitled to, as justice should be for every one, and not only , for people with money, thank you.

STATEMENT OF THE CASE

Petitioner contends that he was denied his constitutional right to effective assistance of counsel, during sentencing, filing of appeals, due to the wrong sentence, and filing of new trial, all the above guaranteed by the Sixth Amendment of the United States Constitution.

Under STRICKLAND vs. WASHINGTON: HILLSMAN vs. UNITED STATES and MAPLES vs. FLORIDA. In MAPLE'S opinion written by Justice Alito's, he concluded that under "agency principles a client cannot be charged with the acts or omissions of an attorney who has abandoned him." In petitioner's case he noted that the State Counsel in her brief on direct appeal, she stated "Appellant's claim that he was deprived of effective assistance of counsel during the period for sentencing, filing a motion for appeals, and new trial should be overruled." See State Brief of Direct Appeal Nos. 05-12-00839& 05-12-0084-0-CR. page seven, appendix A.

The fact that Counsel for the State had no problem to acknowledge that petitioner was in fact abandoned by trial counsel give the presumption that they are above the law, and can do whatever , and get away with.

In the Fifth Circuit Opinion in HILLSMAN, the Court also concluded that: <at-335> The Sixth Amendment guarantees that ("On criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense." It is well established that the accused is entitled to assistance of counsel NOT only at the at the trial itself,

but in "all critical stages" of his prosecution, if counsel for the accused is totally absent during a critical stage, then there is a presumption of prejudice under CRONIC, and a "Reversal is Automatic.")

Under the above case then petitioner's conviction is in direct conflict, because the record is very clear, however, because petitioner was pro se, and the State was covering petitioner's trial counsel's for his wrong acts and omissions no one held appointed trial counsel Paul Johnson accountable in fact the State of Texas protected counsel's actions, in every step of the way, after all Johnson admitted he was a "Star in the Texas " prosecution team in one of his affidavits — Appendix A-2

(2). The record is clear on question number two, the Honorable Trial Judge Teresa Hawthorne violated the plea agreement, as on its face the agreement contract is for TEN years (deferred Adjudicated Probation), see appendix A-3, as on the back of the agreement it clearly shows that on April 9, 2012 ,trial counsel Paul Johnson, District Attorney MS. Chris Hawkins, Defendant Juan F. Turcios, and Trial Judge Honorable Teresa Hawthorne, enter into in agreement where the maximum allowed sentence will be ten years, this fact was memorialized not only on the plea agreements (see appendix A-3), but on reporters record F11-70886-P & F11-70896-P, Volume two, page 16 line one thru five, see appendix A-3.

Unlike LAFLER vs. COOPER: MISSOURI vs. FRYE Petitioner had a valid plea-agreement which was and still enforceable, if breached by either the defendant or the prosecution, moreover,

Article 26.13(a)(2) of the Texas Code of Criminal Procedure States in part: ("Plea bargain consist on three parts: Plea of guilty, consideration for it, and approval by the court of agreement: In order for the agreement to be binding, the court must approved and accept both aspects of it i.e., 'plea and bargain.'") Further, trial court exceeded its authority to accept or reject negotiated punishment recommendation.

The Texas Court of Criminal Appeals set the standard on the following case: **PERKINS vs. THIRD COURT OF APPEALS** (Overview) Relator, (Honorable BOB PERKINS, 331 J.D.C.Texas) <at-276> Relator trial judge agreed to the terms of the plea agreement between the State and the Defendant in which the maximum term of incarceration to be imposed by relator was set at 25. Under the agreement relator was free to imposed a lesser sentence, however, the Texas Court Appeals found that once relator accepted defendant's plea of guilty and approved the the plea agreement, he was without authority, or power to do other than specifically enforce the agreement. The court denied relator's petition for mandamus and ruled that when defendant entered into a plea bargain agreed with the prosecutor, and relator approved the agreement, and the agreement was not kept, the proper relief was either specific performance of the agreement or withdrawal of the plea if requested by the defendant, the court found 'sua sponte' granting a new trial was void.

In petitioner's instant case several factor were the cause for trial judge not follow the agreement, but the most relevant

factor the counsel leaving the court-room, and there after counsel's abandonment.

The State prosecution conceal the fact in direct appeal, and appellate counsel overlooked the issue, but it is not the first time or last, in the next case which perfectly makes sense, in direct conflict with petitioner's. Appendix - A - 8

VELAZQUEZ vs. FAYETTE <at-156> Counsel reference to section-9727 of his plea, on direct appeal. Instead counsel falsely stated that Velazquez G.B.M.I. plea has been accepted, which the trial court, and the Pennsylvania Superior Court repeated.

<at-157> This is the first time that a court will consider these errors by trial counsel, and it comes nearly a decade since Velazquez was sentence. "SOME EXPLANATION IS WARRANTED."

<at-160> There is no dispute that the State court's did not adjudicate Velazquez G.B.M.I. claim on the merits. Trial counsel did not raised the claim on direct appeal, P.C.R.A. counsel falsely averred that Velazquez's GBMI plea was in fact accepted, and thus construed the claim as only speaking to section 9727.(a) The PCRA and Superior courts did the same as a result, the State Court "misunderstood the nature" of Velazquez claims, and failed to adjudicated on the merits.

CHADWICK, 312 F.3d. at-606 <at-161> The ineffectiveness inquiry centers on whether "counsel made errors so serious that counsel was not functioning as the counsel guranteed for the defendant by the Sixth Amendment." UNITED STATES vs. BUI.795 F.3d 363, 366(3rd Cir. 2015). (citation omitted). This requires a showing that " counsel's representation fell below an objective standard of resonableness." LAFLER, 566 U.S. at-163.

When the transcripts were sent to the Dallas Court of Appeals ,someone crossed-out the part of the ten years on both plea bargain agreements, F11-70886 & F11-70896, however it is duly noted that there is no "initials nor date" validating this, indication that a person try to alter, destroy, or conceal, with the intent to impair its verity, legibility, with the intent to affect the course of the outcome.

(4) Petitioner's trial counsel conflict of interest start in the early stage or since appointed, as petitioner first ask counsel to reduce bail ,but counsel refused, there is plenty evidence within the clerk's record to prove that counsel was acting in conflict.

On the 9 day of April, 2012 during prehearing, and after petitioner had pleaded guilty in exchange for the 10 years counsel ,first conflicting statement was in part the following:

Volume two page 12 of the reporters record, Appendix (A-4).

JOHNSON: Now, Juan ,these are your cases, I'm your lawyer. I came in this morning ready to go to trial. And you told the court ,to the fact, that we were ready, that based upon your plea you wished to have a trial. And you and I have spoke about that, you spoke to the Judge a few minutes early. But the bottom line is ,these are your cases. You and I have talked about them and I certainly told you NEVER go in--to come in and plead guilty to a case you're not guilty of or you have no criminal responsibility for it.

Now during direct appeal ,trial counsel first affidavit to the Dallas Court of Appeals ,and Texas Court of Criminal Appeals ,dated July 8 2015,which counsel state in part:

Applicant signed the plea bargain agreement which contains the proper punishment range of 2-20 years confinement with an optional fine not to exceed \$10.000.

Furthermore,Applicant was eligible for deferred adjudication probation. He entered an open plea of guilty to request probation from the Court.

"Appendix A-5"

Based on the above,counsel was working for the State and not on petitioners best interest,counsel failed to acknowledge that there was a cap of ten years .but instead he said 2-20 years,agaiing on counsel's next affidavit he give a conflicting version from the first two .where he stated in part,

Mr. Turcios was very difficult to represent and deal with throughout the entire case.

He agreed to plead to a 10 year sentence, but change his mind, and did an open plea of guilty.

The affidavit entered as appendix(A-6),as it list the demeanor way of counsel,referring to petitioner.

It is fair to said that even counsel for the State could see that petitioner was unaided during trial as in their brief ,they acknowledge that if petitioner was innocent, and knew about ,his complainent why he plead guilty?. This can be seen in appendix (A-7),as counsel for the State wrote: "Turcios was aware of impeaching information ,but plead guilty anyway". All appellate Court Failed to review the record,as

it happen in Velazquez supra.

Petitioner is not very skillful nor good in writing, but he understood that he was pleading guilty, and with optional from the trial court to sentence petitioner to a lesser time as the court said of record, I'll give you 3 years probation you do 2 and come back with your lawyer, and I will cancel your third year. This is not of the reporters record but it happen as, it can be seen in Perkins supra.

"Contra veritatem lex nunquam a liquidum permittit".

"Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere".

Petitioner now has been turn down in the Texas Court of Criminal Appeals, "Denied relief without written order." Now petitioner's attention turn to the United States Federal District Court for the Northern District of Texas.

Petitioner filed his writ of habeas under 28 U.S.C. §2254 on September 23, 2016, the court assigned a magistrate Judge, who on August, Honorable Judge David C. Godbey accept the findings and conclusions, and recommendations from Magistrate Judge, denying relief, and issuing of C.O.A..

On October 8, 2018 the Honorable Clerk respond to petitioner letter, acknowledging that petitioner's objections to Magistrate Judge never made it to the court, on November 30th, 2018 the Court issue an order, in which denied all relief, under 28 U.S.C. §2254, and under motion 60(b)(6), and even if petitioner did mailed on time (Aug. 16, 2018), the court still remains of the opinion that the F.D.R. is correct (Appendix (B-1)).

Petitioner then filed, and paid, the filing fee (\$505.00)

REASONS FOR GRANTING THE PETITION

The UNITED STATES SUPREME COURT is a court of final review, and not first view, the Court recognizes the prudence, when faced with an equitable, often fact-intensive inquiry, of allowing the lower court to undertake it in the first instance, however, when a case as petitioner's case which involved corruption, by the State, and attorney negligence, and no one can see because is on plain sight, it automatically invokes this Honorable Court Jurisdiction, unless, however the State of Texas is a soveriang country.

This country was founded on the principles that justices is for any, and every one regardless religion, color, or believe. However the mighty State of Texas is defiant, as petitioner is not the first or last person seeking justice, the record is ample, in petitioner's case but everyone refused to look, In the good book of wisdom "King Sallomon sak god for one thing only wisdom to ruled with justices ", when the King was faced with his first trial two woman appear, both woman had babies at the same house, but one of the womans baby died at birth, faced with so inttrige case the king ask to cut the baby in half, and give each a piece of the baby which was alive. Before the baby got cut in half, the the true mother of the baby said NO just give it to her. In petitioner's case faced with no help he opted for what was best, but justices never came.

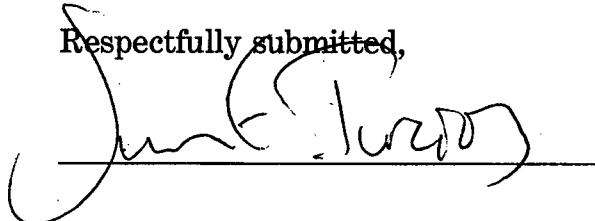
CONCLUSION

For the reasons stated within petitioner prays the court to grant to be heard ,in the interest of justices, and give

The petition for a writ of certiorari should be granted.

Justices in the name of relief, by remand this case for resentencing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Turro".

Date: July 23 2021