

No. _____

21 - 6258

IN THE
SUPREME COURT OF THE UNITED STATES

Ramiro Romero — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ORIGINAL

FILED

JUN 10 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Texas Court of Criminal Appeals at Austin
~~The Court of Appeals for the First District of Texas~~
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ramiro Romero
(Your Name)

9601 SPUR 591
(Address)

Amarillo TX 79107-9606
(City, State, Zip Code)

(806) 381-7080
(Phone Number)

QUESTION(S) PRESENTED

When an attorney curtails her investigation and fails to interview a defendant's requested witnesses because the attorney mistakenly assumed the witnesses were adverse to the defendant, is the attorney's investigation deficient, warranting a harm analysis under Strickland?

Should the Court of Appeals have considered the United States Supreme Court decision, *Andrus v. Texas*, when evaluating Appellant's claim that his attorney provided ineffective assistance of counsel by failing to perform a thorough investigation?

Whether the issues presented below were resolved correctly, that is, in accordance with the applicable law.

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. Romero, No. 1493513, In the 228Th Judicial District Court of Harris County, Texas, Judgment entered July 19, 2018.

Romero v. State, No. 01-18-00698-CR, In the Court of Appeals for the First District of Texas at Houston. Denied on Aug. 28, 2020.

Romero v. State, No. PD-0873-20, In the Court of Criminal Appeals at Austin. Denied on Dec. 15, 2020.

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.....	6

INDEX TO APPENDICES

APPENDIX A *First Court of Appeals in Texas, Memorandum,*

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Andrus v. Texas, 140 S.Ct. 1875 (2020)

5

STATUTES AND RULES

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 _____ 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 _____.

☐ 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 August 28, 2020
A copy of that decision appears at Appendix A.

☐ 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

U.S. CONST. amend. VI

U.S. CONST. amend. XIV

STATEMENT OF THE CASE

Petitioner was convicted of continuous sexual abuse of his biological daughter from his first marriage. (C.R. 213.) Relying entirely on statements from the complainant, the State's evidence was that petitioner had abandoned the complainant's family subsequent to the sexual abuse and was never seen again until years later, he mysteriously appeared in a car outside the family's apartment. (S.R.R. at 61.) The complainant's fear that petitioner might be returning is what purportedly precipitated her outcry of sexual abuse. (S.R.R. at 61.) Petitioner's attorney called no witnesses and raised a defense of mistaken identity, arguing the complainant had confused petitioner with a different man who had also purportedly touched her inappropriately. (S.R.R. at 105.) During punishment, petitioner's attorney again called no witnesses, and while the complainant's mother testified she, like her daughter, had been sexually assaulted by petitioner during their marriage. (R.R. 8 at 6-8.) Petitioner, despite having no criminal history, was sentenced to life without the possibility of parole. (C.R. 213.)

Shortly after sentencing, petitioner filed a motion for new trial with affidavits from three witnesses: Veronica Sanchez, Esmeralda Sanchez and Eliza Sanchez. (C.R. 268-70.) All of them were part of a family unit petitioner had joined after divorcing the complainant's mother. (C.R. 268-270.) Unlike the State's theory of the case, which posited petitioner had abandoned the complainant's family after his divorce from the complainant's mother, each of the Sanchezes averred that the complainant repeatedly visited petitioner at their home and appeared to have a normal parent/child relationship with him. (C.R. 268-270.) Further, the Sanchezes stated that petitioner's first wife had been vindictive and jealous and had made threats to put him in jail before any allegation of sexual abuse arose. (C.R. 268-270.) Additionally, for punishment purposes, all three witnesses informed the court that petitioner had been an excellent father figure in their household for several years and had provided for them financially and emotionally and never behaved in an abusive manner. (C.R. 268-270.)

REASONS FOR GRANTING THE PETITION

The trial court found the trial attorney's efforts were not deficient in part because the attorney "was unsure if the witnesses would be helpful or damaging to the defense." (C.R. 312; Col. #8). And the Court of Appeals affirmed, finding it reasonable to conclude Veronica's absence "had more to do with her own unwillingness to respond to petitioner's trial counsel than it did with the quality of petitioner's trial counsel's representation." Romero at 14. In effect, the opinion in petitioner's case supports the proposition that an intentionally lackluster investigation of a background witness is justified if the attorney is "wary" that the witness could be "damaging" or uncooperative. *id.* (C.R. 258.)

It should be noted that the Court of Appeals in this case never performed a harm analysis because it found the attorney's investigation was not deficient. Romero, 01-00698-CR page 14. Petitioner asks this Honorable Court to review the trial attorney's investigation for deficiency in order to determine whether the Court of Appeals should have performed a harm analysis.

At the time of petitioner's case was set for submission, the United States Supreme Court had yet to decide *Andrus v. Texas* and so neither party cited to this case in their briefs. *Andrus v. Texas*, 140 S.Ct. 1875 (2020). However, *Andrus*, which reversed the Court of Criminal Appeals in Texas, this Court found deficient the background investigation of a death penalty defendant from Fort Bend County, was decided two and a half months prior to the Court of Appeals decision in petitioner's case. *Romero v. State*, 01-18-00698, August 28, 2020 (Tex. App. - Houston [1st Dist.]). The *Andrus* opinion speaks directly to the issue of a criminal defense attorney's investigations in uncovering a defendant's background. *id.* In *Andrus*, the attorney actually produced before the jury the defendant's mother, father, prison gang counselor and a psychological expert to discuss the defendant's history of drug use. *id.* at 3-4. Nevertheless, this Court found the defense attorney had failed to identify a wealth of other mitigating background information and therefore, this Court ruled, the trial attorney in that case had provided deficient performance. *id.* Additionally, this Court ruled that "defense counsel's failure to uncover and present voluminous mitigating evidence was not justified as a tactical decision." *id.*

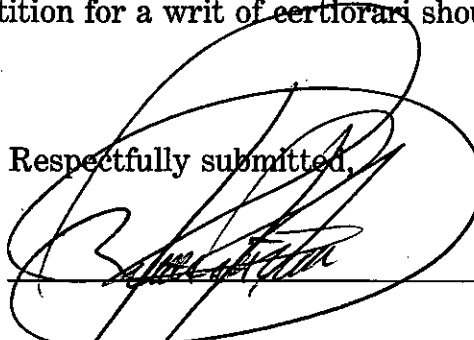
In comparison to the background investigation of petitioner's attorney, *Andrus*' attorney appears to have completed a much more thorough background investigation. Petitioner's attorney never utilized an investigator at all and never

Conducted an interview with any of petitioner's immediate family members who had lived with him for years prior to his arrest. (C.R. 257; 268-270). But the Andrus opinion is conspicuously absent from the Court of Appeals analysis in petitioner's case and it appears that Andrus was never considered. *Romero v. State*, 01-18-00698, August 28, 2020 (Tex. App.-Houston [1st Dist.]). This case is therefore appropriate for review and petitioner requests this Honorable Court remand the case to the Texas Court of Criminal Appeals to consider this Court's decision in Andrus.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: June 6th 2021