

No. 21-6434

Supreme Court, U.S.
FILED

SEP 28 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Robert Alan Fratta — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Alan Fratta
(Your Name)

Polunsky Unit, #999189
3872 FM 350 South

(Address)

Livingston, TX 77351
(City, State, Zip Code)

936/967-8082 (Warden's Office)
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

***** CAPITAL CASE *****

- 1) CAN A LAW OF PARTIES (OR AIDING AND ABETTING) BE ADDED TO A JURY CHARGE WHEN A PERSON IS INDICTED AS THE ONLY ACTOR TO COMMIT AN OFFENSE?

- 2) IS U.S. CONSTITUTION ARTICLE 1 SECTION 9 and/or THE 1st AMENDMENT VIOLATED WHEN COURTS DECLINE TO RULE ON THE MERITS OF CLAIMS PRESENTED IN WRITS OF HABEAS CORPUS?

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

- * Fratta v. Davis, No. 4:13-cv-3438, U.S. District Court for the Southern District of Texas. Judgment entered Sept. 18, 2017.
- * Fratta v. Davis, No. 17-70023 (889 F. 3d 225), U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 1, 2018.

TABLE OF CONTENTS

OPINIONS BELOW..... 1
JURISDICTION..... 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3
STATEMENT OF THE CASE 4
REASONS FOR GRANTING THE WRIT 7
CONCLUSION..... 11

INDEX TO APPENDICES

APPENDIX A - Decision of the Texas Court of Criminal Appeals from 6/30/21

APPENDIX B - Prior Decision of the Texas Court of Criminal Appeals

APPENDIX C - 4/1/21 Writ of Habeas Corpus

APPENDIX D - Request for Rehearing & Ruling information

APPENDIX E - Petitioner's Indictment

APPENDIX F - Petitioner's Jury Charge

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Banister v. Davis, 140 S.Ct. 1698 (2020) 5
Jackson v. Virginia, 443 U.S. 307 (1997) 5
Medrano v. Texas, AP-75, 320 (TCCA 2008) 8

STATUTES AND RULES

Texas Rules of Appellate Procedure 79.2 6
Texas Code of Criminal Procedures 11.071§5(a)(2) 10
Texas "Law of Parties" (Penal Codes 7.01 & 7.02) passim
"Aiding and Abetting" Laws of any kind (Federal or States). passim

U.S. CONSTITUTION AND BILL OF RIGHTS

Article 1 Section 9 10
1st Amendment 10
5th, 6th & 14th Amendments passim

v

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 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 Texas Court of Criminal Appeals from 6/30/21 ~~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.

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 6/30/21.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter ^{FILED} ~~denied~~ on the following dates: 7/15/21 & 8/16/21, and a copy of the ~~order denying~~ rehearing (8/16/21) appears at Appendix D. No ruling was made. See App. D, Ex. 1

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

(RELEVANT PARTS)

Article 1 Section 9: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

1st Amendment: "Congress shall make no law prohibiting the free exercise...or abridging the freedom...or the right of the people to...petition the government for a redress of grievances."

6th Amendment: "In all criminal prosecutions, the accused shall enjoy the right to...be informed of the nature and cause of the accusation..."

5th & 14th Amendments: "No person shall be deprived [nor shall any State deprive any person of]...life, liberty or property without due process of law [nor deny to any person within its jurisdiction the equal protection of the laws]."

Texas Code of Criminal Procedure 11.071§5(a)(2): "If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that: by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt".

Texas Penal Codes 7.01 & 7.02 and Aiding and Abetting/Law of Parties in General: Quoting the statutes is irrelevant because it's not the Legislative wordings this petition is concerned with, but rather how the government and courts have been applying and allowing a law of parties or aiding and abetting in certain circumstances which must be ruled unconstitutional to do. Not that a law of parties or aiding and abetting can't be applied at all.

Texas Rules of Appellate Procedure 79.2(d): "A motion for rehearing an order that denies habeas corpus relief under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed. The Court may on its own initiative reconsider the case."

STATEMENT OF THE CASE

Petitioner Robert Alan Fratta ("Fratta") was indicted as the **only actor** of shooting a person to death while committing a burglary - **all by himself**. (See Appendix E, Count 4). But at trial the State and their evidence said Fratta did **NOT** shoot and kill or burglarize anyone, and that he wasn't even at the scene. Yet Fratta was convicted of committing the burglary murder, then sentenced to death for that crime in itself. This miscarriage of justice is the issue at hand due to Fratta getting convicted **solely and specifically** because a law of parties was added to that indictment count in the jury charge. (See Appendix F, pages 5-6). Fratta argues such an addition is unconstitutional.

Fratta had instructed his court appointed trial attorneys to argue that **no** law of parties could be added to **that** count due to his being indicted as a sole actor and it violating Notice and Due Process. But they ignored Fratta's insistences.

In direct appeal, Fratta instructed his court appointed attorney to argue the evidence was legally insufficient, especially because the court **had to omit** that unconstitutional (and unlawful) law of parties addition and rule Fratta innocent as charged in his indictment. But again Fratta's attorney ignored his insistences, so Fratta filed numerous complaints of ineffective assistance of appellate counsel to the Texas Court of Criminal Appeals ("TCCA") - to no avail. Fratta then requested to file his legal insufficiency and related issues as pro se, but the TCCA denied his motion. Forced to file the legal insufficiency, material variance, and constitutional violations in direct appeal in the interest of justice (and exhaustion), Fratta submitted 2 pro se briefs. (See TCCA No. AP-76,188, or S.Ct. No. 18-6298 Appendix G). In its

Opinion denying Fratta's attorney's brief, the TCCA duly noted Fratta's pro se filings, but immediately thereafter stated: "Fratta does NOT challenge the sufficiency of the evidence of guilt" (emphasis mine), and conducted no sufficiency analysis on its own accord. (See Opinion page 2, or S.Ct. 18-6298 Appendix D, page 2).

In State habeas, Fratta again instructed his court appointed attorney to raise the Notice and Due Process violations and legal insufficiency under Jackson v. Virginia, but again got ignored. Fratta then went thru great hardships to get that attorney dismissed and be designated fully pro se for the remainder of his State proceedings in a hearing conducted on 8/22/13. But all Fratta's pro se filings about the Notice, Due Process, insufficiency issues, and to get his attorney's writ declared a non-application and dismissed so a new and proper writ could be filed - got denied and/or ignored. (See trial court records under No. 1195044 and TCCA No. AP-76,188 and No. WR-31,536-04, or S.Ct. 18-6298 Appendix H).

In federal habeas, Fratta again instructed the court appointed attorney to file the Notice, Due Process, and related issues. Initially his attorney did not. But after Fratta threatened complaints to the State Bar, the attorney vaguely did, but not effectively. (See U.S. Southern District No. 4:13-cv-3438 Dockets 15 & 51). Fratta again had to file supplements and complaints, but got denied and ignored. (See Dockets 53, 68 & 78, or S.Ct. 18-6298 Appendix J Exhibits 1-3). That federal judge denied the attorney's writ and upheld Fratta's conviction **specifically** on that law of parties addition. (See Docket 80, or S.Ct. 18-6298 Appendix B). Fratta then timely filed a 59(e) motion - again citing the issues, but the judge struck it from the record in violation of this Court's ruling in Banister v. Davis, 140 S.Ct. 1698. (See Dockets 87, 88 & 90, or S.Ct. 18-6298 Appendix J Exhibit 4). A different judge took over

and Fratta motioned for him to accept and rule on the 59(e), but he denied the motion. (Dockets 105 & 106). Fratta then filed the issues in 60(b) motions, but again got denied and stricken. (Dockets 114-116, 118, 119, 123, 127-131, & 135). Fratta's newer appointed attorneys then finally filed a 60(b), but it too failed to effectively cite and argue the issues and got denied. (Dockets 141, 144 & 145).

Being fully pro se in State courts, Fratta then submitted a new writ of habeas corpus which again raised the Notice and Due Process violations and related issues, and it got filed on 4/1/21. (See Appendix C). But on 6/30/21 the TCCA denied it as an abuse of writ without ruling on the merits of the issues (See Appendix A), and never even mailed Fratta a copy or notified him of the denial. On 7/12/21 Fratta timely mailed/"filed" from his cell - a motion for reconsideration under TRAP 79.2, but the TCCA didn't show it received or docketed. So on 8/9/21 Fratta mailed/filed another request for reconsideration - Certified Mail. (See Appendix D). On or about 8/27/21 the TCCA suddenly docketed both rehearing filings, but show his first one received on 7/15/21 and the second on 8/16/21. As of this writing, no ruling has been made on either motion for rehearing/reconsideration.

Thus arises this petition for a writ of certiorari mailed/filed within 90 days from the 6/30/21 writ denial.

REASONS FOR GRANTING THE PETITION

FOR QUESTION #1: The U.S. Constitution under the 6th Amendment of the Bill of Rights demands the government properly inform a person of the accusation(s) against him with enough advanced notice so the accused can properly prepare for his defense. Due Process of the 5th and 14th Amendments also demand such advanced notice, a detailed informing of the accusation(s) made, a duty for the government to prove the indictment accusation(s), and for the trial court to ensure the indictment is adhered to and that the government meet its burden of proof before the accused can be found guilty. When a person is informed in an indictment that he's being charged as the only actor of a crime such as a burglary murder, that's precisely what the government **must prove** and the court **must ensure**. The government has to prove the accused himself committed a murder and a burglary. The government and/or court **cannot change** the indictment **after** the trial to say some other actor(s) actually committed the burglary murder but that the accused solicited the other actor(s) to do it. That change violates "Notice" and Due Process, and creates a different offense than initially charged and prepared for. Such an unconstitutional change comes about when the court allows the government to add a law of parties or aiding and abetting charge to a jury charge. But a law of parties or aiding and abetting can **only** be added when **multiple** parties or actors are first initially charged in the indictment. In other words, **all** parties/actors involved in the offense **must** be charged in the indictment in some role and capacity in order to permit the same to be charged in the jury charge via a law of parties or aiding and abetting addition - when the roles can then be swapped around if necessary. And when specific actors are named and charged in an indictment

count, Notice and Due Process demand the law of parties or aiding and abetting addition also charge only those specific actors. No other actors can be added. And most importantly, **NO** law of parties or aiding and abetting can be added at all whenever the accused is the only person charged in the indictment. Yet this is what occurred in Fratta's case. (See Fratta's indictment and jury charge pages 5-6 in Appendices E & F, and his writ and request for reconsideration in Appendices C & D for details). Altho the TCCA has repeatedly ruled: "the law of parties need not be pled in the indictment" (Medrano v. Texas, AP-75,320 at page 11), that does **not** mean a person can be indicted as a sole actor and then add a law of parties to a jury charge without Notice and Due Process being violated. In fact, Fratta can't find any Texas (or federal) case law rulings stating Notice and Due Process are not violated when a law of parties (or aiding and abetting) is added to a jury charge when the accused was indicted as the only actor, and expects the Respondent won't find any rulings stating such either. Because the Notice and Due Process issues have apparently never been specifically addressed in that manner, prosecutors are taking full advantage of it. And by refusing to rule on Fratta's filings for 11 years now, the TCCA is **allowing** this practice to continue. Being that Texas allows this unconstitutional practice, it's likely other States do too. The federal courts probably also allow this practice via aiding and abetting additions. Such practices are a threat to the entire public and this Question is of national importance. Currently it means **anyone** can **easily** be convicted of a crime - simply by indicting him as the only actor of an offense he did **NOT** commit, but then after trial - add a law of parties or aiding and abetting charge stating someone(s) else committed the crime but the accused was somehow a party to it. For example, let's say former Justice

Antonin Scalia strongly disliked President Kennedy ("JFK") and publically vented his contempt for him. JFK suddenly gets assassinated and a left-wing Democrat District Attorney and trial court judge indict Scalia for murdering JFK by himself as a sole actor (even tho they know Scalia was at church at the time). Scalia goes to trial and the government then completely changes its story to Lee Harvey Oswald doing the shooting and presents Jack Ruby's girlfriend as a "witness" who testifies she was told by Ruby that he was solicited by Scalia to kill JFK, but that Ruby then got Oswald to do the shooting. A law of parties/aiding and abetting charge is then added to the jury charge saying "Oswald and/or Ruby" shot JFK, but that Scalia solicited either Oswald or Ruby. Scalia is naturally totally unprepared and shocked by this complete change, **easily** convicted as a result of the hearsay and circumstantial evidence, and sentenced to die. Impossible? Improbable? **No**, because **that's** exactly what was done to Fratta and **CAN** happen to **ANYONE**. Fratta was convicted **AND** upheld **SOLELY** because of such an unconstitutional law of parties addition.

Also keep in mind that the State assuredly **told** the grand jurors and presiding judge that Fratta was **NOT** at the scene at all, yet still got them to sign off as Fratta being at the scene and committing the burglary and murder by himself. If such corruption by the government and judges can exist in Houston/Harris County Texas, **surely** it exists **elsewhere** too, and this Court needs to step in and stop the **ongoing injustice**.


If this Court denies this petition without review, it will mean **allowing** these unconstitutional practices to continue, and Fratta **will** be executed even tho he's **completely innocent**.

FOR QUESTION #2: From trial onward, Fratta has exercised all due diligence to get the violations of Notice and Due Process ruled on - yet has been ignored and denied by his attorneys and courts alike. Fratta and all U.S. citizens have an undeniable Right to petition the government for a redress of grievances under the 1st Amendment. Additionally, Article 1 Section 9 of the U.S. Constitution mandates no court can in any way suspend or deny a person the Right to file and receive a ruling on issues presented in writs of habeas corpus (except "in cases of rebellion or invasion"). The U.S. Constitution trumps any and all State laws, and no State laws or court rulings can be made in contrary to the U.S. Constitution. The TCCA has repeatedly denied Fratta (and numerous other prisoners) these 2 Rights, including now by not ruling on the merits of his 4/1/21 writ issues. (See Appendix A). There was no "abuse of writ" on Fratta's part at all, and Fratta fully and easily satisfied the State law requirements under Texas Code of Criminal Procedures 11.071 section 5(a)(2). (See Appendices C & D). Texas (and other States) routinely dismiss writs of habeas corpus **without** ruling on the issues presented. Answering this Question is of national importance as it affects ALL citizens' Rights to be heard in writs of habeas corpus and any form of petition to the government for a redress of grievances.- which are currently being denied.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 9/26/21