

No. 21-6434

IN THE
SUPREME COURT OF THE UNITED STATES

Robert Alan Fratta - Petitioner

v.

The State of Texas - Respondent

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Robert Alan Fratta, Petitioner
Polunsky Unit, #999189
3872 FM 350 South
Livingston, TX 77351

CAPITAL CASE

On 3/4/22 Petitioner Fratta received a copy of the Respondent's Brief in Opposition ("BIO"). This Reply by Fratta is being "filed" from his cell on 3/7/22; well within the 14 day deadline of Rule 15.5, and necessitated by Rule 15.6 due to almost everything in the BIO being totally "new points raised."

I. Simply put, THE STATE MADE NO ATTEMPT WHATSOEVER TO ANSWER FRATTA'S QUESTIONS, and were not even fully accurate in their statement of the case; all done to manipulate this Court into a denial of the petition. Fratta asks the Court to recognize the fact that the State COMPLETELY CHANGED FRATTA'S QUESTIONS TO TOTALLY DIFFERENT QUESTIONS THEY MADE UP THEMSELVES (See BIO page "i") just to intentionally avoid answering his questions. They based all their arguments on THEIR questions INSTEAD of Fratta's to intentionally MISLEAD this Court into believing those are the questions and issues Fratta raised in his petition for certiorari and subsequent State habeas in the Texas Court of Criminal Appeals ("TCCA"). But they are not. Because the State purposely presented and argued 2 entirely different questions from Fratta's, this Court should DISREGARD THE BIO in its entirety due to its complete IRRELEVANCE, and simply review Fratta's questions and all he presented in his meritorious petition.

Fratta raised 2 Constitutional Questions of national importance. The fact that the State completely changed those questions should be a telltale sign to this Court of their national importance, merit, and necessity for this Court to grant both questions for review.

II. Regarding the 1st Question: Fratta asked if a law of parties (or aiding and abetting) can be added to a jury charge when a person is indicted as the

only actor to commit an offense. He argued NO law of parties (or aiding and abetting) can be added in such instances due to Notice and Due Process being violated. THE STATE DID NOT ANSWER THIS QUESTION AT ALL because they surely recognize Notice and Due process ARE indeed violated by such an addition, Fratta was convicted and upheld in federal court under such a law of parties addition to an indictment count that charged him as a sole actor of being at the scene (the house he co-owned with his wife) and shooting and killing his wife with a handgun while he burglarized his own garage - all BY HIMSELF. (See indictment count 4 in Petition Appendix E). But the evidence presented by the State said Fratta was NOT at the scene, did NOT shoot anyone, and did NOT burglarize anyone or any building. This Court should easily understand WHY the State REFUSED to address this question.

All the State did was cite the same old worn out decades old claim that a law of parties need not be pled in an indictment (BIO page 18). But as Fratta already pointed out in his petition, subsequent writ, and request for rehearing (Petition Appendices C and D), those TCCA rulings deal ONLY with the WORDING of the law of parties not needing to be QUOTED in the indictment, but that MULTIPLE partIES MUST BE CHARGED IN THE INDICTMENT in order to allow for a law of partIES wording to be added to a jury charge. Again, NO law of partIES can be added to a jury charge if only ONE (1) person is charged in the indictment - as in Fratta's case at hand. CONTRARY to the BIO claims, the TCCA has NEVER ruled that a person can be indicted as a sole actor and Notice and Due Process are not violated by adding other actors into a jury charge via the law of parties. The State KNOWS the TCCA has never made such a ludicrous ruling. The State also knows NO court has ever decided or ruled on this law of parties question of Notice and Due Process violations in general, period. It's never been addressed by ANY court (State, federal, 5th Circuit, other Circuit, or U.S. Supreme Court), which is why the State could

not cite any case laws to oppose this question of Fratta's. Fratta even foretold that the State would not cite any such case laws because there are NONE. (See Petition page 8). In fact, in the favorable ruling of Planter v. Texas, 9 SW3d 156 (TCCA '99), the TCCA majority squarely REJECTED a dissenting judge's feeble attempt to claim it's okay to add other actors to a jury charge. (See Planter footnote 6).

Furthermore, NO court has ever directly addressed, "decided" or "rejected" Fratta's law of parties issue in his many pro se filings raising it all, which is why the State did not quote any such decision, rejection, ruling or direct addressing of this matter. "Claims One and Two" of Fratta's federal habeas the BIO referred to on page 17 did NOT raise this question/issues, which is why the State didn't quote Claims One and/or Two. NO attorney of Fratta's has ever filed, presented or argued this question/issues on his behalf in any court, which is why the State didn't quote any such attorney filing.

Because no attorney would file this question/issue for Fratta - even with all his complaints and insinuations, Fratta was forced to file it all pro se from direct appeal onward. Altho courts DID accept and rule on SOME of Fratta's pro se pleadings, they all REFUSED to accept this issue - and used a hybrid bar as the excuse to avoid acquitting him. However, the hybrid issue is now a MOOT POINT because Fratta was designated as FULLY PRO SE for ALL remaining State habeas proceedings back on 8/22/13. Fratta has NO ATTORNEYS in these State proceedings. Fratta's pro se subsequent writ is the FIRST TIME this law of parties issue of Notice and Due Process violations has been raised WITHOUT any hybrid procedural bar to stand in the way, and that's why the TCCA made no mention of any hybrid bar and HAD to accept and make a ruling on his writ from which this petition arises. (See Petition Appendix A).

As a result of all stated above, ALL the State's arguments about the hybrid aspect and anything Fratta's attorneys filed and got rulings on, have ZERO RELEVANCE to Fratta's subsequent writ, request for rehearing/reconsideration, and this petition now. ONLY because the TCCA does NOT want to address this issue - did they deny Fratta's writ as an "abuse" AND refuse to make any ruling on his request for rehearing. But there was NO abuse whatsoever. As Fratta pointed out in his subsequent writ and request for rehearing (Petition Appendices C and D), and as the State quoted on BIO pages 15-16, Fratta's subsequent writ was filed under Texas Code of Criminal Procedures Article 11.071 Section 5(a)(2) which states: "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." If this Court will PLEASE READ Fratta's subsequent writ AND request for rehearing in Petition Appendices C and D, It will clearly see Fratta EASILY SATISFIED that Article, and, that the TCCA intentionally ruled it an abuse SOLELY to AVOID addressing this IMPORTANT issue - just as they've done since direct appeal - because it would mean acquitting Fratta straight off Death Row.

If this Court denies this petition without review, Fratta WILL be executed - as all his official appeals are exhausted, and, this Question of national importance with its clear violations of the U.S. Constitution will be allowed to stand for States (and the federal government) to continue to violate and victimize citizens.

III. Regarding the 2nd Question: Fratta asked if the U.S. Constitution Article 1 Section 9 and/or the 1st Amendment are violated when Courts decline to rule on the merits of claims presented in writs of habeas corpus - such as what the TCCA did to Fratta with their TYPICAL "abuse of writ" denial. As is plain to see there, Fratta did NOT cite any Due Process violation, and therefore

the State's completely different question regarding Due Process and their ensuing argument is TOTALLY IRRELEVANT to Fratta's question and argument and should be DISREGARDED as pointed out above.

IV. Compelling Reasons to Grant Fratta's Petition:

1. Both Questions are of national importance to the public in State and federal cases.
2. Fratta's 1st Question has never been answered by the TCCA, 5th Circuit, or this Court, and it needs to be answered now.
3. Since the State could not cite any Circuit Court cases, it would seem no Circuit Court has answered Fratta's 1st Question, and it needs to be answered now.
4. Fratta was unable to find any TCCA, federal court, 5th Circuit, any other Circuit, or Supreme Court case laws answering his 2nd Question, and since the State didn't cite any, that's an indication that no Courts have answered it and it needs to be answered now.
5. This Court can exercise Its ultimate discretion to recognize the merit and importance of these 2 Questions and the need to answer them now.
6. This is a CAPITAL CASE. Fratta is innocent, his appeals exhausted, and this petition is his last resort before getting an execution date.

V. Fratta beseeches this Court to please GRANT his petition for writ of certiorari and appoint a D.C. area firm to brief and orally argue his Questions to this Court on his behalf.

Respectfully submitted,



Robert Alan Fratta, Petitioner
Polunsky Unit, #999189
3872 FM 350 South
Livingston, TX 77351

Dear Ms. Stewart-Klein,

3/6/22 (mailed 3/7/22)

Enclosed is a copy of my Reply to your Brief in Opposition ("BIO"). As you will read on Reply p.1, I stated your Statement of the Case was inaccurate. There are far too many examples to cite, and it won't help anyway. But if you'll allow me to give you one example - maybe you'll realize how easy it is for you to have made what I'll call at this time, mistakes. On BIO p.11 you made your previously used claim that PRYSTASH'S pager was called from a church phone at 8:28pm. But if you'll look at the phone records you'll see it was MY pager number that was called; NOT Prystash's. You're making it look like Prystash and I had communications of some sort AFTER Farah was killed at approximately 8:05pm, but we had NONE. That call to my pager was made by RICK ORLANDO asking me to bring a can of protein powder with me to the gym THAT NIGHT, and he admitted to that call in my 1st trial. You have access to ALL my phone records from that night ~~onward~~ onward, plus Prystash's and Gipp's, and you surely know there was NO communications between myself and Prystash AFTER Farah's death AT ALL. You know there was 24/7 surveillance on me from the point of my release from custody on 11/10/94 onward for WEEKS. Prystash NEVER contacted me and ~~vice versa~~ ^{vice} versa. The records PROVE all that. I wish you and everyone else involved in my case would simply get the FACTS CORRECT and tell the TRUTHS as I've done from my custodial interrogation on 11/9/94-11/10/94 and onward.

Sincerely,



Robert Alan Fratta