No. 21-6377

IN THE

SUPREME COURT OF THE UNITED STATES

SHAWN PAUL PINSON — PETITIONER
(Your Name)

vs.

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

Shawn Paul Pinson #2109680
(Your Name)

12071 FM 3522
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

IS THE TEXAS COURT OF CRIMINAL APPEALS VIOLATING PROCEDURAL DUE PROCESS BY DENYING RELIEF TO HABEAS APPLICANTS WITHOUT EXPLANATION WHEN THE TRIAL COURT HAS MADE EXTENSIVE FINDINGS OF FACT AND CONGLUSIONS OF LAW RECOMMENDING RELIEF?

LIST OF PARTIES

[x] 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

State of Texas v. Shawn Paul Pinson; Cause No. B-44,548; in the 161st District Court, Ector County, Texas

Pinson v. State, 2018 WL 6722294, No. 11-17-00003-CR (Tex. App.-Eastland 2018, pet. ref'd)

Ex parte Shawn Paul Pinson; Cause No. WR-92,773-01

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TABLE OF AUTHORITIES CITED

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[ ] is unpublished.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[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix 3 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Texas Court of Criminal Appeals court appears at Appendix 3 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was 9/22/21.
A copy of that decision appears at Appendix 3.

[X] A timely petition for rehearing was thereafter denied on the following date: September 29, 2021, and a copy of the order denying rehearing appears at Appendix 4.

[ ] 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

The Fourteenth Amendment of the United States Constitution states; "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; 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."

STATEMENT OF THE CASE

Question Presented: Is the Texas Court of Criminal Appeals violating procedural due process by denying relief to habeas applicants without explanation when the trial court has made extensive findings of fact and conclusions of law recommending relief?

I. CHRONOLOGY OF THE PROCEEDINGS.

Shawn Paul Pinson, "Applicant", pled not guilty to murder in cause number B-44,548 in the 161st District Court of Ector County before Judge John Smith. A jury convicted him and assessed his punishment at 70 years in prison and a $10,000 fine on December 9, 2016. Matt Thomas represented him at trial.

The Eleventh Court of Appeals affirmed Applicant's conviction in an unpublished memorandum opinion issued on December 21, 2018. The Court of Criminal Appeals refused discretionary review on April 17, 2019. This Court denied certiorari on October 7, 2019. Pinson v. State, 2018 WL 6722294, No. 11-17-00003-CR (Tex. App.-Eastland 2018, pet. ref'd)(AX 1). Michele Green represented him on appeal.

Applicant filed a post-conviction writ of habeas corpus challenging the legality of his confinement in the state court. The state habeas court made extensive findings of fact and conclusions of law recommending relief be granted. (AX 2). The Court of Criminal Appeals entered an order denying Applicant relief on September 22, 2021, without explanation. (AX 3). Reconsideration was denied on September 29, 2021. (AX 4). Randy Schaffer represented him in habeas corpus proceedings.

II. STATEMENT OF FACTS.

A. The Indictment

The indictment alleged, in pertinent part, that on or about October 18, 2014, Applicant did "intentionally and knowingly cause the death of... DANIEL SEARCY, by hitting or striking with his hand or an object unknown to the Grand Jury or by kicking or stomping with his foot the said DANIEL SEARCY, or by a manner and means unknown to the Grand Jury, or by a combination therof"; and, that Applicant did, "intending to cause serious bodily injury to DANIEL SEARCY, intentionally and knowingly commit an act clearly dangerous to human life, namely hitting or striking with his hand or an object unknown to the Grand Jury or by kicking or stomping with his foot the said DANIEL SEARCY, or by a manner and means unknown to the Grand Jury, or by a combination thereof, which caused the death of the said DANIEL SEARCY". (C.R. 7-8).

B. The Evidence

Daniel "Searcy" was seen in Applicant's front yard on Saturday, October 18, 2014 (8 R.R. 168-72). Applicant had a party that night (9 R.R. 31). His girlfriend, Allison "Blessie", testified that he was using methamphetamine the entire weekend (9 R.R. 27, 31-32, 49). She took a Xanax and was asleep by 11:00 p.m. (9R.R. 32). He was still awake when she awoke on Sunday (9 R.R. 32-33). When she left on Sunday night, he was acting paranoid and appeared to be in fear for his life (9 R.R. 35, 53). He gave her a note that said she could have his dog and Corvette and wrote a note to his parents that he loved them and was sorry (9 R.R. 38-41; S.X. 190, 193).

Cedric "Reese", a friend, testified that Applicant called

him and said that he was in trouble and needed money to leave town (9 R.R. 105-06).

Charles "Christensen", another friend, saw Applicant working on his car on Monday (8 R.R. 87, 92-93). Applicant would not go inside the house and was upset but would not say why (8 R.R. 93-94). Christensen returned on Tuesday, saw Applicant working on his car, and asked to go inside (8 R.R. 97-98). Applicant said that the sewer pipe broke and that he did not want to live any longer and "deal with this" (8 R,R. 98-99). Christensen thought he was referring to his drug problem.

Tamara "Ingraham", Searcy's sister, testified that she and her mother drove to Applicant's home on Wednesday, saw Applicant and another man outside, and asked if they had seen Searcy (8 R.R. 174, 176-81). Applicant said that he last saw Searcy on Sunday (8 R.R. 181-82).

Christensen received a call from Paul "Neatherlin" on Friday, called the sheriff to report what Neatherlin told him, and called Ingraham to ask whether she had located Searcy (8 R.R. 100, 102-03). Ingraham called the police and drove to Applicant's home (8 R.R. 183-84).

Odessa Police Department Sergeant James "Chadwick" testified that officers conducted a welfare check at Applicant's home on Friday, October 24, and found Searcy's body in the living room (7 R.R. 176-77; 8 R.R. 48). He had wires and electrical cord around his neck and body and zip ties around his wrists and ankles (8 R.R. 50).

A pathologist testified that Searcy had fractures to his

skull, thyroid cartilage, and ribs and that he died from blunt force injuries (7 R.R. 124, 126, 133). The skull and rib fractures could have been caused by being hit, kicked, or stomped (7 R.R. 137). He might have survived had he received medical treatment (7 R.R. 135).

A forensic scientist testified that a glove found at the scene contained a mixture of DNA from Applicant, Searcy, and two other persons (8 R.R. 126-28, 142-43). A partial profile on a bottle of bleach and the bindings on Searcy's body did not contain Applicant's DNA (8 R.R. 132, 138).

Neatherlin, Applicant's employee and friend, testified that he went to Applicant's home on October 19th to ask about work (9 R.R. 68, 74-75).[1] Applicant was crying in the front yard and asked him to leave (9 R.R. 74). He asked what was going on (9 R.R. 76). Applicant said that he would tell him later.

Neatherlin testified that he returned four or five days later and saw Applicant, who was high, working on his car (9 R.R. 76-77). He noticed a padlock on the door and an unusual odor (9 R.R. 76). Applicant said that a sewer pipe broke. They drove to a Wal-Mart for Applicant to buy cleaning supplies (9 R.R. 77-78). Applicant gave Neatherlin money to buy bleach and air freshener (9 R.R. 78-79).[2]

1. Neatherlin, who was living in a drug treatment facility, had charges of possession of a controlled substance, fraudulent use and possession of identification information, burglary of a building, and unauthorized use of a motor vehicle pending in Midland County and Brady County when he testified (9 R.R. 69, 98). He denied that he would receive leniency for his testimony (9 R.R. 70, 100).

2. Applicant and Neatherlin made several purchases at the Wal-Mart on October 22 and 23, but Wal-Mart's records could not confirm that they purchased cleaning supplies and bleach (8 R.R. 153-65; S.X. 201-05).

Neatherlin testified that, when they returned to Applicant's home, he saw clothes and food outside and asked what was going on (9 R.R. 84). Applicant cried, said that he would not lie anymore, unlocked the door, took him inside, and showed him Searcy's body (9 R.R. 84-85). Neatherlin asked if Applicant killed him (9 R.R. 86). Applcant said, 'I didn't mean to do it. I killed him, but I didn't do what they did in there. Mexicans are crazy.' He elaborated that Searcy had stolen from him; that he wanted to teach Searcy a lesson; and that "the Mexicans" put ties and cable wires around Searcy's neck (9 R.R. 86-87, 91).

Neatherlin testified that he left and called the sheriff and Christensen (9 R.R. 88-89). He hired a lawyer because he was concerned that he had bought bleach and air freshener (9 R.R. 89-90). The police contacted him, and he gave a statement (9 R.R. 90).

C. The Court's Charge

The court instructed the jury on murder, manslaughter, and negligent homicide (C.R. 64-66).

D. The Arguments

The prosecutors argued that Applicant knocked Searcy down during a struggle, stomped on his head, and bound him while he was unconscious (10 R.R. 33-35); that Applicant told Neatherlin that he was responsible for Searcy's death but did not mean to kill him (10 R.R. 14); that Neatherlin was credible because he called the sheriff and had no deal on his pending charges (9 R.R. 38-39); that Applicant should be convicted of murder instead of

manslaughter because this was an "intentional act" (10 R.R. 11, 35-36); and, that Applicant demonstrated consciousness of guilt by lying to Searcy's family, buying cleaning supplies, and giving away his property (10 R.R. 13-14, 43).

Defende counsel argued that Neatherlin was not credible because he used methamphetamine and had pending charges (10 R.R. 17-18); and, whoever hit and kicked Searcy didinot intend to kill him or realize the seriousness of his injuries (10 R.R. 30-31).

E. The Verdict

The jury convicted Applicant of murder (C.R. 72).

III. THE STATE HABEAS PROCEEDINGS.

In his state habeas proceedings Applicant advanced two grounds. One against trial counsel and the second against appellate counsel.

A. The Standard Of Review For Effectiveness Of Trial Counsel

Applicant had a right to effective assistance of counsel at trial. U.S. CONST. amends. VI and XIV; Powell v. Alabama, 287 U.S. 45, 71 (1932). Counsel must act within the range of competence demanded of counsel in criminal cases. McMann v. Richardson, 397 U.S. 759, 771 (1970).

In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court addressed the federal constitutional standard to determine whether counsel rendered reasonably effective assistance. Thewdefendant first must show that counsel's performance was deficient under prevailing professional norms. Id. at 687-88. The defendant also must show that counsel's

deficient performance prejudiced the defense by depriving him of a fair trial with a reliable result. Id. at 687.

The defendant must identify specific acts or omissions that are alleged not to have been the result of reasonable judgment. Strickland, 466 U.S. at 690. The reviewing court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the range of professionally competent assistance. Id. Ultimately, the defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. Strickland requires a cumulative prejudice analysis. Ex parte Aguilar, 2007 WL 3208751 *3 (Tex, Crim. App. 2007)(not designated for publication); White v. Thaler, 610 F.3d 890, 912 (5th Cir. 2010).

Applicant need not show a reasonable probability that, but for counsel's errors, he would have been acquitted. "The result of a proceeding can be rendered unfair, and hence, the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." Strickland, 466 U.S. at 694. The issue is whether he received a fair trial that produced a verdict worthy of confidence. Cf. Kyles v. Whitley, 514 U.S. 419, 434 (1995).

B. Deficient Performance

1. Applicant alleged that counsel was ineffective where he did not object to the court's charge that failed to limit the definitions the culpable mental states to the result of Applicant's conduct and

to the erroneous arguments that the culpable mental states apply to the nature of his conduct.

Specifically, Neatherlin testified that Applicant told him that he did not mean to kill Searcy (9 R.R. 86). The pathologist testified that Searcy might have survived had he received medical treatment (7 R.R. 135). The court instructed the jury on murder, manslaughter, and negligent homicide (C.R. 64-66). The court provided the definitions of the culpable mental states of intentionally and knowingly in Sections 6.03(a) and (b) of the Penal Code (C.R. 63).

> A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.
>
> A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstaaces exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

Counsel did not object to the court's failure to limit the definitions of the culpable mental states to the result of Applicant's conduct.

The prosecutors argued without objection during summation that Applicant was guilty of murder instead of manslaughter because this was an"intentional act" (10 R.R. 11, 35-36).

Murder is an"result of conduct" offense. Cook v. State, 884 S.W.2d 485, 491 (Tex. Crim. App. 1994). To convict, the jury must find that the defendant intended the result; it is not enough that he intended the conduct. The trial court errs in instructing the jury, with regard to a "result of conduct" offense, that the definitions of the culpable mental states

apply to both the nature and the result of the conduct instead of limiting them to the result of the conduct. Id. at 486.

The court's charge improperly authorized the jury to convict Applicant of murder based on a finding that he intentionally or knowingly engaged in the conduct. Cf. Sneed v. State, 803 S.W.2d 833, 835 (Tex. App.-Dallas 1991, pet. ref'd). The jury should have been instructed that he could not be convicted of murder unless he intended to cause death or serious bodily injury. Id. at 836. Thus, a correct definition of the culpable mental states would have been, "A person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to cause the result. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result."

Counsel informed habeas counsel in writing that he knew at the time of trial that murder is a "result of conduct" offense, but the definitions of the culpable mental states in the court's charge tracked the statute and, as a result, both the charge and the prosecutor's arguments were correct. (AX 5, 6). Clearly, he is not aware of Cook and its progeny.

Counsel performed deficiently in failing to object that the court's charge failed to limit the definitions of the culpable mental states to the result of Applicant's conduct. Instead, it allowed the jury to convict him of murder on a finding that he intentionally or knowingly engaged in the conduct without regard to whether he intended the result. Counsel also performed

deficiently in failing to object to the prosecutor's erroneous arguments that Applicant was guilty of murder instead of manslaughter because he acted intentionally. See Banks v. State, 819 S.W.2d 676, 679-82 (Tex. App.-San Antonio 1991, pet. ref'd) (counsel ineffective in failing to object to court's failure to limit definitions of culpable mental states to result of conduct in injury to a child case). No sound strategy could justify these omissions.

2. Applicant alleged that counsel failed to object to prosecutor's erroneous argument and verdict form that required the jury to unanimously acquit applicant of murder before it could consider the lesser included offenses.

A prosecutor argued without objection during summation that the jury could consider the lesser included offenses only if it unanimously acquitted Applicant of murder (10 R.R. 35). The verdict forms also required the jury to acquit him of murder in order to consider manslaughter and negligent homicide (C.R. 69-70),

The court's charge cannot require the jury to acquit the defendant of the charged offense before it can consider any lesser included offenses. See Barrios v. State, 283 S.W.3d 348, 353 (Tex. Crim. App. 2009). The prosecutor cannot properly argue that the jury must unanimously agree that the defendant is not guilty of the charged offense before it can consider the lesser included offenses. See Lee v. State, 971 S.W.2d 130, 131 (Tex. App.-Houston [14th Dist.] 1998, pet. ref'd).

Counsel informed habeas counsel in writing that the verdict forms in Ector County have always required the jury to acquit the defendant of the charged offense before considering the

lesser included offenses and that the prosecutor's argument and the verdict forms were correct (AX 6). Clearly, he is not aware of Barrios and Lee.

Counsel performed deficiently in failing to object to this improper argument. Cf. Ex parte Drinkert, 821 S.W.2d 953, 955-57 (Tex. Crim. App. 1991)(counsel ineffective in failing to object to prosecutor's misstatement of law during summation). No sound stategy could justify counsel's failure to object to argument that misstates the applicable law to defendant's detriment. See Andrews v. State, 159 S.W.3d 98, 103 (Tex. Crim. App. 2005).

C. Prejudice

The jury was misled regarding the applicable law and probably convicted Applicant of murder because it found that he intentionally engaged in the conduct (hitting and kicking Searcy) without finding that he intended to cause the result (death or serious bodily injury that resulted in death). Had the court correctly instructed the jury that it could not convict Applicant unless it found beyond a reasonable doubt that he intended to cause the death or serious bodily injury, and had counsel successfully objected to the verdict forms and the prosecutor's misstatements of the law during summation and obtained instructions to disregard, there is a reasonable probability that the jury would have convicted Applicant of manslaughter or deadlocked. Had the court overruled timely objections to the erroneous definitions and arguments, there is a reasonable probability that an appellate court would have reversed any

conviction for murder.

Appellate courts have reversed convictions for "result of conduct" offenses, such as murder and aggravated assault, where the jury received these erroneous definitions of the culpable mental states and the prosecutors argued that the jury could convict the defendant of the charged offense if he intentionally engaged in the conduct. See Sneed, 803 S.W.2d at 837 (aggravated assault conviction reversed, despite counsel's failure to object, where court failed to limit definitions of culpable mental states to result of conduct and prosecutor argued that defendant could be convicted if he intended the conduct and it was reasonably certain to cause the injuries); Chaney v. State, 314 S.W.3d 561, 573 (Tex. App.-Amarillo 2010, pet. ref'd)(murder conviction reversed, despite counsel's failure to object, where erroneous definitions of culpable mental states undermined defense theory that death was result of reckless or negligent conduct).3 A murder conviction obtained under these circumstances is not worthy of confidence. Accordingly, Applicant is entitled to a new trial.

D. The Standard Of Review For Appellate Counsel

Applicant had a right to effective assistance of counsel on appeal. U.S. CONST. amends. VI and XIV. Evitts v. Lucey, 469 U.S. 387, 396 (1985). Strickland applies in the appellate context. Smith v. Robbins, 528 U.S. 259, 285 (2000). Appellate counsel has a duty to raise any issue that would require relief.

3. The court of appeals sua sponte ordered the parties to brief this issue as unassigned error. Chaney, 314 S.W.3d at 563

Where appellate counsel failed to raise a viable issue, a habeas applicant is entitled to an out-of-time appeal if reasonably competent counsel would have raised the issue and there is a reasonable probability that an appellate court would have granted relief. See Ex parte Daigle, 848 S.W.2d 691, 692 (Tex. Crim. App. 1993)(appellatedcounsel ineffective in failing to raise denial of jury shuffle); Ex parte Miller, 330 S.W.3d 610, 624-25 (Tex. Crim. App. 2009)(appellate counsel ineffective in failing to raise that evidence was insufficient to prove prior conviction alleged for enhancement of punishment).

E. Deficient Performance

1. Applicant alleged that appellate counsel failed to raisad the issue that the trial court erred in failing to limit the definitions of the culpable mental states to the result of applicant'sa conduct.

Competent appellate counsel would have challenged the erroneous definitions of the culpable mental states for the reasons set forth on pages 11-15 of Applicant's brief.

F. Prejudice

Had appellate counsel raised the issue, there is a reasonable probability that an appellate court would have found egregious harm and reversed Applicant's conviction pursuant to Sneed and Chaney. Thus, he is entitled to an out-of-time appeal.

G. The Trial Court's Factual Findings And Conclusions Of Law

After a hearing on the merits, the habeas court made extensive findings of fact and conclusions of law recommending habeas relief for Applicant (AX 2).

H. The Denial

In a one sentence opinion, the Court of Criminal Appeals

denied Applicant's writ without explanation (AX 3).

I. The Suggestion For Reconsideration

After the denial of habeas relief Applicant submitted a motion for Applicant's Suggestion For Reconsideration arguing that it is procedural due process for an appellate court to reject a trial court's findings of fact and conclusions of law recommending habeas corpus relief without explaining why they are not supported by the record.

Applicant requested that the Court of Criminal Appeals, on its own initiative, reconsider the denial of relief and, at the very least, explain why it rejected the trial court's conclusion that Applicant was harmed by the erroneous definition of the culpable mental states in the abstract portion of the charge where the prosecutors argued that the jury should convict him of murder because this was an"intentional act".

The Court of Criminal Appeals denied Applicant's suggestion for reconsideration (AX 4).

ISSUE ONE

Is the Texas Court of Criminal Appeals violating procedural due process by denying relief to habeas applicants without explanation when the trial court has made extensive findings of fact and conclusions of law recommending relief?

A. Standard Of Review

It is well settled law in the State of Texas that finding error in the jury charge begins, rather than ends, the appellate court's inquiry. The next step is to make an evidentiary review of the record as a whole which may illuminate the actual, not just the theoretical harm to appellant. See Cook, 884 S.W.2d

at 491-92 (holding intentional murder is a "result of conduct" offense, therefore, the trial judge erred in not limiting the culpable mental states to the result of appellant's conduct); Sneed, 803 S.W.2d at 836 (aggravated assault of a public servant conviction reversed where the State did not prove Sneed intended the result obtained); Chaney, 314 S.W.3d at 568 (murder conviction reversed where the State did not present evidence that it was appellant's purpose that [victim] would die as a result of their confrontation); Green v. State, 891 S.W.2d 289, 294 (Tex. App.-Houston [1st Dist.] 1994, pet. ref'd) (aggravated assault conviction affirmed where evidence that appellant intended the result was overwhelming).

Thus, under Texas law, due process required that Applicant's claim of jury charge error be assessed in light of the total circumstances of the trial. Namely, 1) the state of the evidence, including contested issues and weight of probative evidence; 2) the entirety of the jury charge; 3) the argument of counsel; and 4) any other relevant information that the trial reveals. Almanza v. State, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985)(on reh'g).

B. The Denial Of Due Process

There is nothing in the record which suggests that the Court of Criminal Appeals conducted the required Almanza analysis. Instead, it rejected the trial court's factual findings and conclusions of law recommending habeas relief for Applicant without any explanation whatsoever. However, this is contrary to the court's own holdinds in regard to the court's

showing their work. See Ex parte Peterson, 117 S.W.3d 804, 818 (Tex. Crim. App. 2003)(holding that courts should "show their work" so that their ultimate factual and legal conclusions are clear to the parties and to reviewing courts); Sims v. State, 99 S.W.3d 600, 604 (Tex. Crim. App. 2003)(stating that when rejecting a defendant's factual sufficiency claim, TRAP 47.1 "suggests that the court of appeals should 'show their work', much as we had to when learning long division in elementary school").

C. Was The Denial Of Relief An Arbitrary Decision

According to habeas counsel, the Court of Criminal Appeals has made a pattern of not explaining in any meaningful way why it rejects trial court recommendations to grant relief in cases in which he or his son represented the applicants. See Ex parte Molina, No. WR-83,007-01, 2015 WL 519737 (Tex. Crim. App. Nov. 25, 2015)(not designated for publication)(rejecting recommendation to grant relief on an ineffectiveness claim with the comment that findings and conclusions "are not supported by the record"); Ex parte Strickland, No. WR-27,079-02, 2020 WL 3635907 (Tex. Crim. App. July 21, 2020)(not designated for publication)(same); Ex parte Connors, WR-73,203-03, 2020 WL 1542424 (Tex. Crim. App. Apr. 1, 2020)(not designated for publication)(rejecting recommendation to grant relief on a suppression of evidence claim with the comment that the findings and recommendation "are not supported by the record"); Ex parte Rene, No. WR-90,417-01, 2021 WL 1257226 (Tex. Crim. App. Feb. 24, 2021)(not designated for publication)(rejecting

recommendation to grant relief on suppression of evidence, false testimony, and ineffectiveness claims with the comment that recommendation "is not supported by the record"). Applicant is concerned that the denial of relief without explanation as to why the court rejected the trial court's recommendation was more about the court's disfavor of habeas counsel that the circumstances of his case. See Ex parte Stoneman, No. WR-86,966-01, LEXIS 369 (Tex. Crim. App. May 9, 2018)(not designated for publication)(noting counsel's repeated instances of unpro unprofessional behavior in habeas proceedings, and reporting counsel to the Office of the Chief Disciplinary Counsel of the State Bar of Texas).

D. What Procedural Due Process Requires

"As a general proposition, reviewing courts ought to mention a party's number one argument and 'explain' why it does not have the persuasive force that the party thinks it does. The party may be dissatisfied with the decision, but at least he will know the reason he was unsuccessful." Sims, 99 S.W.3d at 603. "Where the issues are settled, the court should write a brief memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it." Id. at 604.

In Applicant's case, the Court of Criminal Appeals has failed to adhere to its own procedural requirement and inform Applicant, to his apparent dissatisfaction, the reason that he was unsuccessful.

IV. CONCLUSION.

The Fourteenth Amendment of the United States Constitution forbids government conduct that deprives "any person of life, liberty, or property without due process of law." Procedural due process may require government to assure that individuals are afforded certain procedures before they are deprived of life, liberty or property. This Court has an opportunity to clarify once, and for all, whether the State of Texas denies habeas applicant's their constitutional right to procedural due process when it rejects a habeas court's factual findings and conclusions of law recommending relief without providing the applicant with any explanation for its decision.

V. RELIEF REQUESTED.

WHEREFORE , PREMISES considered, Applicant respectfully requests that this Honorable Court enter an order granting him a writ of certioari, and remand his case back to the Court of Criminal Appeals with an order that Applicant be granted a new trial, or at the very least, that an explanation be given explaining the reason for the court's decicion, and any such further relief that is proper.

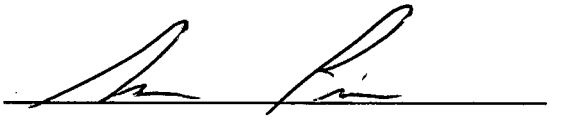
REASONS FOR GRANTING THE PETITION

This Court should grant this petition because it confronts the Court with a very important question of law. What does due process require of the state's highest court in deciding a habeas applicant's case when it chooses to reject a trial court's factual findings and conclusions of law recommending relief. This will not only assist Applicant, but also the countless others who may come after him, in ensuring that each of these persons may understand why it is that they are being denied the ultimate liberty interest, when clearly there appears to be a dispute as to the legality of their confinement amongst the judicial bodies. This case gives this Court an opportunity to clarify once and for all that persons deprived of liberty are entitled to know a court's reasoning for such deprivations.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 14, 2021