No. 21-6705

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Tracy Warterfield — PETITIONER
(Your Name)

vs.

Bobby Lumpkin, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Tracy Warterfield, #1829999
(Your Name)

TDCJ-Clements Unit, 9601 Spur 591
(Address)

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

N/A
(Phone Number)

QUESTION(S) PRESENTED

1) Does a United States Court of Appeals have jurisdiction pursuant to 28 U.S.C. §1291 to deny a Motion for a Certificate of Appealability when the District Court's putative Final Judgement in a 28 U.S.C. §2254 proceeding is issued prior to resolution of a pending interlocutory appeal perfected under 28 U.S.C. §1292(a)(1) thereby making the District Court's Judgement premature and ipso facto not "final?"

2) Has the Supreme Court of the United States effectively nullified or else diminished the Contracts Clause (Art.I, §10) over time to the point that the Constitutional prohibition that "No State shall ...pass any...Law impairing the Obligations of Contract..." is irrelevant to the proper interpretation and enforcement of plea agreement contracts?

3) Does the Due Process Clause of the Fourteenth Amendment compel State prosecutors to perform, and courts to interpret and enforce, plea agreements pursuant to the status of the laws in existence at formation?

4) Where a prosecution is void ab initio because it contravenes a vested contractual right to immunity from prosecution, is the AEDPA one year limitations under 28 U.S.C. §2244(d)(1)(A) inapposite since it requires a "final" conviction to operate?

5) Where trial counsel is first retained and paid in full then becomes court appointed to frauduently enlarge his fees over Defendant's written pretrial objection, is an actual conflict of interests created wherein the client's legal interests are subordinated to the attorney's legal interests causing a per se denial of the right to counsel guaranteed by the Sixth Amendment?

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

From the same trial court with a Dallas Police Department Agency #867045-X, there is currently before this Court a Petition for a Writ of Certiorari filed last week. That Petition is for an interlocutory appeal dismissed by the Fifth Circuit under 18-40936. This Petition is from the denial of a Motion for COA with a Fifth Circuit number of 20-40620. It is asked that last week's Petition and this Petition be consolidated.

Another seperate case is unrelated but has a 1994 plea agreement as a common nexus. Its Agency number is #691635-X. It is currently in the Fifth Circuit under No. 21-10782. As explained in the Petition, if the trial courts' lack of jurisdiction is considered, then this case may also be considered for consolidation.

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TABLE OF AUTHORITIES CITED

(The remainder of the aythorities supporting this Petition are cited and listed in the Petition filed last week for Fifth Circuit No. 18-40936 and is being asked to be consolidated with this Petition)

STATUTES AND RULES

Same as Petition filed last week and asked to be consolidated.

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

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at No. 20-40620; CA5-[illegible]; 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 B to the petition and is

[X] reported at No. 4-17-cv-00330-ALM (EDTX); 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 _____ 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

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

The date on which the United States Court of Appeals decided my case was August 2, 2021.

[X] 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 _____. A copy of that decision appears at Appendix _____.

[ ] 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).

JURISDICTION (CONTINUED)

Pursuant to S.Ct.R. 27.3, Petitioner requests that No. 21-_____ and this Petition be consolidated. The trial court is the same, the Questions presented are mostly alike except for the conflict of interest claim in Question 5 above, and argumentation is not made more effective by needless repetition of the contentions. The case in common is Dallas P.D. Agency #867045-X. It was tried in the 416th District Court of Collin County, Texas. The Fifth Circuit number for the first Petition filed last week is 18-40936, and for this Petition 20-40620.

Also, please note that a seperate and second case from a different trial court, the 7th Criminal District Court of Dallas County, Texas, is currently before the Fifth Circuit under 21-10782 where Petitioner seeks issuance of a COA. The nexus between that case #691635-X and this case #867045-X is a 1994 plea agreement contract. Petitioner is claiming several common violations of that contract in the prosecution of both cases starting October 2010. The violations in common are:

1) Prosecution eleven years after immunity from prosecution became a right vesting fully in 1999 for both cases;

2) That as an unimpairable obligation of contract the State is confined to a fatally flawed 1992 DNA search warrant; and

3) The State is estopped by contract from using any part of the 1994 negotiated conviction in the prosecution of either case #691635-X or case #867045-X.

In addition to the common contract violations, both cases have in common the same actual conflict of interest.

JURISDICTION(CONTINUED)

Petitioner is therefore asking the Court to exercise its discretion as to how, if at all, these cases should be consolidated for purposes of granting a Writ of Certiorari. The Fifth Circuit numbers are 18-40936, 20-40620, and 21-10782 with the last one currently pending in that Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

There are no additional provisions involved in this Petition that were not included in the Petition filed last week and asked to be consolidated with this Petition. Thus, please see that Petition, No. 21-_____.

STATEMENT OF THE CASE

On May 5, 2017 Petitioner Warterfield filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 in the Eastern District of Texas. He was challenging the constitutionality of a conviction he received in the 416th District Court of Collin County, ~~texas~~ Texas in December of 2012 for two counts of aggravated sexual assault of a child and two counts of indecency with a child. The prosecution of this case, Dallas Police Department Agency #867045-X, was conditioned and limited by a 1994 plea agreement contract between Texas and Warterfield that resolved Cause No. F93-43772-RV approved by the 292nd District Court of Dallas County, Texas on April 18, 1994. See Appendix I.

As part of the District Court's §2254 proceedings, Petitioner filed a petition for injunctive relief pursuant to Fed. R. Civ. P. 65 seeking to have Texas officials enjoined to perform their unimpaired obligations of that contract and, or to make performance pursuant to and governed strictly by the status of the laws in existence at contract formation for both cases. These performances were, and are, needed to cease and prevent irreparable injuries to Petitioner. However, the District Court construed the pro se injunctive pleading as one requesting a writ of mandamus. That Court then dismissed the pleading without prejudice for want of jurisdiction.

Believing that the construement was illiberal, contrary to authorities and an abuse of discretion, or in alternate that the District Court had jurisdiction to issue a writ of mandamus under its 28 U.S.C. §1331 jurisdiction already being exercised and under 28 U.S.C. §1651 or else 28 U.S.C. §1361 infringes the Seperation

of Powers Doctrine by Congress stripping district courts' inherent power to enforce the Constitutional duties State officals owe a plaintiff or petitioner by way of mandamus, Petitioner ~~ah~~ having these beliefs filed an interlocutory appeal pursuant to 28 U.S.C. §1292(a)(1) in the Fifth Circuit. See 18-40936. After an initial Appellant's Brief and a Supplemental Brief addressing the Court's jurisdiction, the Court of Appeals fully accepted its §1292(a)(1) jurisdiction and ordered briefing by the parties. See Appendix H. After receiving Appellant's Brief on the Merits, Respondent-Appellee's Brief, and Appellant's Reply, the interlocutory appeal was submitted for panel consideration.

However, prior to the Fifth Circuit's resolution of the pending and lawfully perfected interlocutory appeal, the District Court issued its putative Final Judgement in the underlying §2254 ~~pr~~ proceeding. The Fifth Circuit soon thereafter dismissed the interlocutory appeal as "moot" without considering the merits; which are, was the construement an abuse of discretion, did the District Court nonetheless have jurisdiction to issue a writ of mandamus, did Congress infringe the Seperation of Powers by enacting §1361, and is Warterfield entitled to equitable relief in both cases however labeled?

Petitioner then proceeded to file a Motion for a COA seeking permission to appeal the denial of his §2254 Petition. See 20-40620, CA5. This Petition for a Writ of Certiorari seasonably follows.

REASONS FOR GRANTING THE PETITION

A court acting without jurisdiction should be assiduously avoided. If found to have occurred, then it should be remedied. By the District Court issuing its Final Judgement in the §2254 proceeding prior to resolution of the pending and lawful interlocutory appeal, that final judgement is premature, incomplete, and ipso facto not "final." Such a premature Judgement denied Petitioner his Fifth Amendment right to due process and his First Amendment right to petition the government for the redress of grievances.

In anology, this would be like a football coach throwing the challenge flag. It being determined that the challenge can be taken, the officials "upstairs" begin to review the call on the field. While waiting for the results of that officials review, the Referee on the field decides that his call was correct and that the officials "upstairs" do not have jurisdiction over his call. Thus, he continues the rest of the match to completion.

The Fifth Circuit erroneously determined that the putative Final Judgement mooted the 18-40936 interlocutory appeal. With the District Court's judgement ipso facto not being final, the Fifth Circuit did not have 28 U.S.C. §1291 jurisdiction to deny Petitioner's Motion for a COA in 20-40620. This Court should not permit a United States Court of Appeals to act without jurisdiction, and certiorari should be granted in 18-40936 and 20-40620 consolidated to determine whether in fact the Fifth Circuit acted without jurisdiction. The pivotal issue is whether the District Court's Final Judgement is in fact final. If not, then the Fifth Circuit acted without jurisdiction.

The jurisdictional questions involved in this case #867045-X and another different case #691635-X run deeper than those just described. Specifically, the two different trial courts were also without jurisdiction. Case #691635-X is currently before the Fifth Circuit under No. 21-10782. It also should be considered for consolidation, either before or after Fifth Circuit resolution, in the event that the two trial courts lacking jurisdiction is deemed cert-worthy by the Court.

As briefed in No. 21-_____ filed in this Court last week and in the Motion for COA pending in the Fifth Circuit under 21-10782, Petitioner contends that he has a fully vested contractual right to immunity from prosecution in both this case #867045-X and case #~~867045~~ 691635-X currently before the Fifth Circuit.

In abbreviated form here, pursuant to the unimpairable and fixed obligations of the April 18, 1994 plea agreement contract (Appendix I) that conditioned and limited prosecution of these two cases, the State of Texas had until on or about December 9, 1999 to prosecute case #867045-X and until on or about October 1, 1999 to prosecute case #691635-X. If not, then immunity from prosecution vests to Warterfield. Such vesting did in fact occur. These fixed obligations of contract are expressly written into the contract at formation, and are derived from the status of laws in existence at formation. Legislation enacted subsequent to formation is irrelevant to the performances, interpretations, and enforcement of the plea agreement. If subsequent legislation is retroactively applied to the plea agreement to either impair the obligations of

contract and, or used to govern performances, both the State and Federal Contracts Clauses are infringed as well as the Fourteenth Amendment's Due Process Clause. Again, these contentions are fully briefed in No. 21-_____ and the Fifth Circuit's 21-10782.

Despite being vested with immunity from prosecution in 1999 for both cases under the fixed obligations of contract, the State of Texas indicted both case #691635-X (Cause No. F10-61655-Y) and #867045-X (Cause No. F10-61715-Y) on October 21, 2010 in Dallas County, Texas. Originally, both were to be tried, either seperately or together, in the 7th Criminal District Court of Dallas County, Texas. However, around late January or early Febuary 2011, it was "discovered" (it can be shown in the record that officials knew proper venue since 1989) that proper venue for #867045-X was Collin County, Texas. Thus, it was transferred there and re-indicted in March 2011 under Cause No. 416-80757-2011. It was assigned to the 416th District Court of Collin County, Texas.

With immunity from prosecution becoming a vested right eleven years or more prior to these indictments, the State lacked standing to prosecute and the trial court lacked jurisdiction ab initio.

The law in effect at formation of contract upon which the immunity from prosecution is based, is the then existing ten year statute of limitations applicable to both cases. The State has maintained that the 1997, 2001, and 2007 amendments to Texas Code of Criminal Procedure, Article 12.01 are applicable to both cases. However, no State's attorney and no court State of Federal has responded to Petitioner's Contracts Clause and Due Process Clause claims that the 1997, 2001, and 2007 legislative acts extending and

eventually eliminating the limitations unconstitutionally impairs the fixed obligations of contract and, or subsequent legislation cannot be used retroactively to govern performances of a plea greement contract. Thus, since these attorneys, magistrates, judges, and justices en masse have repeatedly ignored the claims that these legislative acts violate the Contracts Clause (both State and Federal), the question must be: Has this Court nullified or diminished the Clause to the point that it is irrelevant to a plea agreement contract? Both Judgements and Sentences are void ab initio and were obtained pursuant to legislation that is constitutionally repugnant. (Note: As briefed with authorities in S.Ct. No. 21-_____ and 21-10782, CA5, the Texas Contracts Clause (Art. I, §16) is an obligation of the plea agreement contract that is also subject to neither impairment nor non-performance and thus protected by the Federal Constitution and this Court's precedents).

In this multiplicity of cases context, no single unconditional grant of habeas corpus relief would be sufficient to stop the continuous irreparable harm caused by breaching the vested right of immunity from prosecution. Either a court must have habeas jurisdiction in both cases, something Petitioner did not believe the Eastern District of Texas had when he filed his injunctive pleading, or it must be able to use some other equitable writ to reach both cases simultaneously as the injunctive pleading was requesting. Technically it was intended to enjoin State officials to perform their unimpaired obligations. Did the District Court have equity jurisdiction over State officials to enforce the Federal Constitutional duties they owed to Petitioner?

Petitioner, though certainly no expert, believes this Court has the power, if exercised, to reach both cases simultaneously; and to reach them with a remedy that goes as far as the infringements of his rights have reached and will be reaching if unchecked.

Thus it is asked that a Writ of Certiorari be granted, the issues clarified by appointed counsel, and resolved in a way that not only enforces the 1994 plea agreement in these cases, but also sets clear guidelines for Defendants, Prosecutors, and Courts that the laws in existence at formation are obligations of contract that cannot be impaired and that those laws are what govern performances to the exclusion of future laws. Of course, going forward, all it would take is a reservation clause as to future laws to make the plea agreement knowingly, voluntarily, and intelligently entered into. However, for all plea agreement contracts that do not contain such a reservation clause, this Court's clarification is needed.

The District Court has made a plain error, arguendo its Final Judgement is deemed "final." That is, it erroneously determined that the §2254 Petition was time-barred due to misapplying the unambiguous language of 28 U.S.C. §2244(d)(1)(A).

Specifically, §2244(d)(1)(A) in order to be calculated requires the existence of a "final conviction." Due to immunity from prosecution becoming a fully vested contractual right prior to the indictments, the prosecution of case #867045-X is void ab initio. A prosecution ipso facto never occurring means that there is no "conviction which can never become "final" - all is null and void. Being that no final conviction exists by which §2244(d)(1)(A) can operate on,

it is inapposite and the §2254 Petition cannot be time-barred. By misapplying the statute's clear and unambiguous language, the District Court committed plain error.

This Petition adds one additional issue that No. 21-_____ did not include. Petitioner asks the Court to consider his actual conflict of interest claim that is in common for the prosecution of both case #691635-X and #867045-X. Not only ~~it is~~ is it believed that this claim is cert-worthy, it is hoped that it will both shock the conscience of the Court as well as demonstrate that nothing occurring in the Dallas County or Collin County trial courts can be considered reliable or have been subjected to a meaningful adversarial process.

In October 2010, Petitioner and his family retained two attorneys who worked together, and only together, to represent him in both case #691635-X and #867045-X. These two attroneys are Kimberly Mayer and William Lee Schultz. The representation agreement was verbal, though required by the Texas Rules of Professional Conduct to be in writing because there was a fee sharing arrangement. Each attorney was directly paid $35,000 for both cases. That comes to $17,500 for each attorney for each case. In addition to that $70,000, Mrs. Mayer received an additional $18,000 to pay a DNA expert, an investigator, and for expenses. All $88,000 was in paid full by April 2011. Copies of these checks, money orders, affidavit, notice from Mrs. Mayer to the Dallas trial court that her and Mr. Schultz had been retained for both cases are in the records. See WR-82,182-02 and WR-82,182-05 Tex.Crim.App., and 3:18-cv-3154-N (NDTX) at Page ID 134-142. Please note that the Eastern District of Texas in

4:17-cv-330-ALM refused Petitioner's lodgement of the state records, denied his motion to have Director complete the lodgement (see Dkt. #21 and Notice #24. How can anyone exercise his right to petition for redress when a court refuses to let the record in?

In early 2011, some time soon after a January 27, 2011 pretrial hearing in Dallas, the State finally acknowledged that the proper venue for #867045-x was Collin County. However, it can be shown by the record, e.g., maps and Detective Schiller's testimony ~~at~~ at 4RR:44 (Not lodged), that it was known since December 1989 that this case had venue of Collin County. The State has not been compelled to explain why it did not notify Collin County prosecutors until 2011 and obstructed venue for 21 years despite knowing since 1989 what county venue attached.

Soon after this venue "revelation" that required #867045-X to be transferred to Collin County, Mrs. Mayer and Mr. Schultz visited Warterfield at the Dallas County Jail. At this meeting, Mr. Schultz first proposed his fraudulent scheme that included enlisting his client's participation. Mrs. Mayer sat silent during this part of the meeting.

The proposal was that Mr. Schultz wanted to become court appointed in the case being transferred to Collin County. In order to do so, Mr. Schultz requested that Petitioner claim indigency upon arrival in Collin County. Petitioner looked in askance to Mrs. Mayer who only shrugged her shoulders and sat silent. So Petitioner asked Mr. Schultz how he could be certain that he would be appointed to this case since it is supposed to be random. He stated that he

used to work with the folks up there and assured me that it would not be a problem. What could I do other than agree? I could not alienate these attorneys who were representing me in these two cases and who were being paid tens of thousands of dollars of my family's hard earned money.

There should not be any doubt when viewed objectively that the moment that Mr. Schultz proposed his fraudulent scheme to enlarge his fees that the attorney/client relationship was irreparably destroyed. Legal matters could not be discussed with any degree of confidence. Neither Mrs. Mayer or Mr. Schultz could be trusted to vindicate Petitioner's legal interests - a mistrust borne out. Despite this, Petitioner remained silent at first, which he truly regrets doing. Regardless of Petitioner's silence, the attorneys had a duty to inform Judge Snipes of the 7th Criminal District Court of what they had created.

They both represented Petitioner during Dallas County case #691635-X; except for abandoning their client at the Motion for New Trial Stage. Upon transfer from Dallas County to Collin County in March 2012, Petitioner claimed indigency upon arrival as planned. Why would I do such a thing except at my attorneys' behest? I had, to my knowledge at that time, two retained and fully paid attorneys for case #867045-X. After transfer, Petitioner was told by his family that Mrs. Mayer was withdrawing from #867045-X and no longer practicing criminal law. Mr. Schultz did get court appointed as he said he could.

Petitioner tried to work with Mr. Schultz, but the relationship was very strained and not functioning well. He would not

advance the Contracts Clause claims or that performances must be made under the status of the laws at formation. Eventually, the trial court being made aware of the strained relationship at a pretrial hearing on September 5, 2012 (never transcribed despite Petitioner's motion for transcription), a second attorney, Mr. Joshua Andor, was appointed. He grasped the basics of those arguments. In fact, Mr. Andor filed a motion to dismiss that included Home Building & Loan Ass'n v. Blaisdell, 209 U.S. 398 (1934) which Petitioner had discussed with him about a week before trial. Please note that the motion for Petitioner to access the law library in Collin County was denied despite #691635-X being on appeal and then preparing #867045-X for trial. Thus, Petitioner was hindered from assisting in his own defense. Petitioner also filed a very inarticulate pro se petition with the trial court trying to explain his claims since Mr. Schultz refused to do so.

As the December 2012 trial date for #867045-X approached, the attorney/client relationship deteriorated even more. In the month before trial, a very critical period, Mr. Schultz refused to meet with Petitioner at the Collin County Jail though he was seen visiting his other clients there. Access to discovery material was promised for months and a bone of contention at the September 5, 2012 pretrial hearing. It was belatedly delivered starting just seven days before trial in piecemeal fashion. One piece was given then removed before the next was given. Mr. Schultz failed to keep his promises to visit and to deliver discovery material in a meaningful manner. Add to this his conducting a fraudulent scheme on his

own client, Petitioner became fed up and filed a pro se motion to dismiss attorney with the trial court. See Appendix ____. In that motion, it clearly stated that Mr. Schultz had been paid in full by Petitioner's family for this case, and that he was conducting a fraudulent scheme to emlarge his pay by becoming court appointed and by enlisting his client's help.

Not only did trial Judge Chris Oldner deny the motion to dismiss attorney, but he actually aided and abetted Schultz's fraudulent scheme. Specifically, despite undeniably aware of the accusation, Judge Oldner bolstered the fraudster's character, concealed the scheme instead of reporting it to the authorities or else initiating sua sponte a court of inquiry pursuant to Texas Code of Criminal Procedure, Article 52, and ultimately paid Mr. Schultz his fraudulent fees - the majority of the $27,700 that has been taxed to Petitioner as court costs over his written pretrial objection. The details of these payments have been sealed.

Why would Judge Oldner pay Mr. Schultz as a court appointed attorney though clearly and indisputably knowing that he had already been retained and paid in full privately for this case? He was, by appearances at least, a participant in the farudulent scheme. It is unknown if that participation was willingly or, as with Petitioner's participatio n, unwillingly. Either way, it certainly does not appear when viewed objectively to have been a fair and impartial trial judge being that he protects his mentor and former co-worker's (Schultz) financial and legal interests over the legal rights of the accused..

All of this has been presented to the two state habeas trial courts, two times to the Texas Court of Criminal Appeals, two different Federal District Courts, and two times to the Fifth Circuit with one of those still pending (21-10782, CA5). In addition, it has been presented in a formal Complaint to the State Commission on Judicial Conduct. See Appendix J. That Complaint was dismissed as "conclusory." Moreover, the courts have analyzed the claim under and misapplied Strickland v. Washington, 466 U.S. 688 (1984) and misapplied the prejudice prong to this per se denial of counsel. The Dallas habeas trial court erroneously claimed that it did not even have jurisdiction over a conflict of interest alleged to have been created during representation of case #691635-X; thus, unadjudicated. Though alleged, no court has correctly applied or analyzed the claim under Mickens v. Taylor, 535 U.S. 162 (2002).

It is simple and clearly substantiated by the records. Mr. Schultz and Mrs. Mayer are retained together for both cases. Both attorneys get their share of $88,000, as well as experts, investigator and expenses covered. They are both present in Dallas for #691635-X, except for their abandoning their client at the Motion for New Trial Stage. For #867045-X, Mrs. Mayer withdrew, but did not repay those unearned fees, and Mr. Schultz enlarged his fees by becoming fraudulently and unnecessarily court appointed. Upon the proposal in early 2011 at the Dallas County Jail, an actual conflict of interest was created, which adversely affected their representation in both cases. They had a duty and should have notified the Dallas trial court of what they had done and were planning to do,

but the actual conflict of interest kept them away from that course of action. That is, their interests prevailed over their client's to his detriment and caused a per se denial of counsel guaranteed by the Sixth Amendment.

Therefore, Petitioner respectfully asks this Court to consider resolving this claim as well as the others in order to protect the integrity of the Bar and the Judiciary. It is difficult for Petitioner to understand how a meritorious claim that a defense attorney proposed and conducted a fraudulent scheme on his own client, coercing his unwilling participation, co-counsel does not speak up for her client but who is able to extricate herself from the partnership, with it all aided and abetted to fruition by a trial judge, can so far be unvindicated. The facts are clear and supported by the record. Any grant of Certiorari should include this issue of gross malfeasance and intolerable collapse of professional and judicial ethics.

CONCLUSION

Petitioner asks this Court to grant a Writ of Certiorari to the Fifth Circuit in order to:

1) Determine whether the District Court's issuance of a Final Judgement prior to resolution of a pending interlocutory appeal ipso facto is not final thereby making it error for the Court of Appeals to exercise §1291 jurisdiction to deny a COA.

2) Has this Court effectively nullified or diminshed the Contracts Clause to the point that it is irrelevant to a plea agreement contract? Though repeatedly claimed to have been infringed, it has been absolutely ignored by every attorney for the State

and every magistrate, judge, and justice State and Federal to have been presented with it throughout these cases.

3) Does the Due Process Clause of the Fourteenth Amendment compel plea agreement performances, interpretations, and enforcements to be made in strict conformity with the status of the laws in existence at formation? It too has been ignored perhaps due to a lack of clear guidelines.

4) Where immunity from prosecution has become a fully vested contractual right, making prosecution thereafter void ab initio, does the one-year limitations apply to a conviction that does not exist and thus can never become final?

5) Will Mr. Schultz avoid any consequence for making his client pay twice for the same case?

Respectfully SUBMITTED this 29th day of October, 2021.

Robert Tracy Warterfield
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TDCJ-CID Clements Unit
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