

OCTOBER TERM, 2021

CASE NO. 21-7061
IN THE SUPREME COURT OF THE UNITED STATES

JOHN LEZELL BALENTINE,

Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

MOTION TO ALLOW PETITIONER 30 DAYS TO ADDRESS THE IMPACT OF
SHINN V. RAMIREZ, UPON THE
PETITION FOR WRIT OF CERTIORARI AND TO DEFER CONSIDERATION OF
THAT PETITION PENDING FURTHER BRIEFING

PETITIONER, John Lezell Balentine, through undersigned counsel, respectfully moves for permission to address the impact of this Court's recent decision in *Shinn v. Ramirez*, 2012 WL 1611786 (2022), upon the pending certiorari petition and to defer consideration of that petition. In support of this request, Petitioner respectfully submits:

1. On January 28, 2022, Petitioner filed a Petition for Writ of certiorari asking this Court to review the Fifth Circuit's decision affirming the denial of his petition to re-open his habeas proceedings pursuant to Fed. R. Civ. P. 60(b).

2. The Petition present the following questions:

Under *Schriro v. Landrigan*, 550 U.S. 465 (2007), does a capital defendant necessarily forfeit his right to allege trial counsel's ineffectiveness for failing to adequately investigate and prepare for sentencing by purportedly instructing counsel not to present mitigation evidence, as the Fifth and Sixth Circuits have held and as applied below, or does *Landrigan* allow a capital defendant to pursue that claim when the instruction is limited or it is not knowing and informed, as the Third, Ninth, Tenth, and Eleventh Circuits have held?

Was trial counsel deficient for failing to adequately investigate and prepare for sentencing and was Mr. Balentine prejudiced by counsel's failure to investigate and present readily available mitigation evidence of his mental health impairments, brain damage, and childhood sexual abuse?

3. Respondents filed a Brief in Opposition to the Petition on May 5, 2022.

In part, the BIO suggested that Petitioner's case was not an appropriate vehicle with which to decide the questions presented in light of the questions concerning 18 U.S.C. § 2254(e) that this Court was considering in *Shinn*. BIO at 31-32.

4. On May 23, 2002, this Court decided *Shinn* and held that, under the facts of that case, § 2254(e) precluded the lower courts from conducting an evidentiary hearing, pursuant to *Martinez*, on the merits of Petitioner's underlying claim of trial counsel ineffectiveness.

5. On May 25, 2022, the Petition for Certiorari was distributed for the conference of June 9, 2022

7. The questions raised in the Petition are based on facts developed at an evidentiary hearing held by the district court to determine if Petitioner could overcome procedural default pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012). This Court's decision in *Shinn* obviously has great impact upon the propriety of certiorari

review and the presentation of the questions in the Petition. Petitioner requests an opportunity to address *Shinn* and to try and persuade this Court that certiorari should still be granted to address the substantial constitutional issues raised in this Petition.

WHEREFORE, Petitioner prays that the Court allow him thirty (30) days to file a supplement to his Petition for Certiorari to address the impact of *Shinn* and to defer consideration of that Petition until after that supplement is filed.

Respectfully submitted,

/s/ Stuart Lev
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Dated: June 1, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused the foregoing to be served on the following person by electronic mail:

Judd Stone
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/s/ Stuart Lev

Stuart Lev

Dated: June 1, 2022