

No. 21-7388

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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AMOS JOSEPH WELLS III,

*PETITIONER,*

V.

STATE OF TEXAS,

*RESPONDENT.*

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE  
TEXAS COURT OF CRIMINAL APPEALS*

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**RESPONDENT'S BRIEF IN OPPOSITION**

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## **THIS IS A CAPITAL CASE**

### **QUESTION PRESENTED**

The State of Texas denied Petitioner Amos Joseph Wells III habeas relief after two and a half years of litigation and full compliance with the state's statutory procedure for capital writs of habeas corpus. The trial court properly found that an evidentiary hearing was not required because no controverted, previously unresolved factual issues material to the legality of Wells's confinement existed.

In light of the state court's compliance with its statutorily required procedure, did the state court violate Wells's right to due process of law?

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**BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

Petitioner Amos Joseph Wells III was found guilty and sentenced to death for the capital murders of his girlfriend Chanice Reed and her mother Annette Reed during the same criminal transaction. *See* SHCR<sup>1</sup> 1:9, 11–15. Wells now seeks certiorari review of the Texas Court of Criminal Appeals’s (CCA) denial of his initial petition for writ of habeas corpus. However, the CCA denied Wells’s writ on state grounds, and Wells has not demonstrated a violation of any federal constitutional right. Certiorari review should, therefore, be denied.

**STATEMENT OF THE CASE**

**I. Facts of the Offense**

The CCA summarized the facts of Wells’s offense in its opinion affirming his conviction and sentence on direct appeal:

At 5:39 p.m. on July 1, 2013, upset that his pregnant girlfriend, Chanice Reed, would not answer his calls, [Wells] drove to Chanice’s house on Pate Street in Fort Worth where she lived with her grandmother, mother, and two younger brothers. Chanice was home with her mother, Annette, and ten-year-old brother, E.M., when [Wells] arrived. Chanice’s seventeen-year-old brother, K.S., was not at home, but he overheard Chanice and [Wells] arguing when he called his mother, Annette, to ask permission to go swimming. K.S. heard Chanice say, “Stop, Amos, you’re scaring me.” He also heard Annette yelling at [Wells] before she ended the call.

Around 6:00 p.m., Annette called her aunt, Joylene Parsons, and asked her to come over. Parsons described Annette as sounding very troubled on the phone and in the background she heard a man yelling at the top of his voice in a “bone-chilling scream.” She also heard Annette say, “You

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<sup>1</sup> “SHCR” refers to the Clerk’s Record of pleadings and documents filed with the clerk during Wells’s state habeas proceedings.

not going in there.” When Parsons asked who was there, Annette replied, “Chanice’s boyfriend,” whom Parsons knew was [Wells]. Annette said, “She got to be the stupidest bitch to open the door to let that fool in,” and then, before ending the call, she said, “Come on, come on.” Parsons immediately started calling family members who lived nearby. At 6:09 p.m., Annette called 9-1-1 for help. As the 9-1-1 operator was asking questions, Annette reported, “He’s going to his truck.” And then the phone went dead.

Pascual Martinez, who had been working on a driveway two houses away, heard the commotion and watched as a man and a woman argued loudly in the front yard. He testified at trial that the argument started getting “bad, bad, bad.” Martinez saw the man retrieve a handgun from a Chevrolet Tahoe parked in front of the house, return to the yard, and then shoot the woman as she screamed, “No, no, no.” He then saw another woman try to bat the gun away before the man shot her, too. Martinez hid at the corner of the house where he was working and heard more shots before the shooter drove off in the Tahoe. Martinez then went to the victims’ house and saw a woman, later identified as Chanice, lying outside the front door with her eyes open; she was bleeding and unresponsive. A neighbor arrived and stated that he had called 9-1-1.

The first 9-1-1 call reporting the shootings came in at 6:15 p.m. Responding officers, firefighters, and paramedics arrived within minutes. Chanice had been shot four times. One shot entered between her eyes and traveled through the right side of her brain. Another shot entered her lower chest. A third shot entered her left abdomen, injuring her lungs, stomach, aorta, and thoracic spine. The fourth gunshot entered the left side of her back, causing a superficial wound. Paramedics at the scene were not able to save her. Chanice’s unborn baby also did not survive. Post-mortem testing revealed that [Wells] was the biological father.

Annette had been shot two times. She suffered a large-caliber gunshot wound to her mid-forehead that severed her anterior cerebral artery and came to rest at the base of her brain. Another shot penetrated above her right ear, inflicting enormous brain damage and collapsing her left eye socket and eyeball. Although early responders found Annette on the ground screaming, she died soon after at the hospital.

E.M. had been shot four times. His dead body was found in a hallway inside the house. One shot went through his right ear, entered his neck on the right side, injured his left subclavian vein and lung, and exited his chest through his back. A second shot entered the front of his chest,

hit his lower pericardial sac, continued through his diaphragm, liver, interior vena cava, lung, and rib, and exited through his back. A third shot entered the front of his chest and went through his stomach, colon, mesentery, and left iliopsoas muscle before exiting his back. The fourth gunshot entered the back of his left forearm and exited through his front forearm.

The cartridge casings found at the scene were all of the same .9 millimeter caliber and brand. It was later confirmed that they had all been fired from the same gun.

Based on statements from witnesses and family members gathered at the scene, officers focused on [Wells] as the prime suspect. At 6:35 p.m., the police dispatcher issued an alert to be on the lookout for a shooting suspect described as a “black male, 22 years of age, Amos, unknown clothing, possibly occupying a gray or gold Tahoe, last seen eastbound on Wilbarger.”

Fort Worth homicide Detective Matthew Barron arrived at the scene at 7:15 p.m. Between 7:15 and 7:25 p.m., responding officer Sean Nguyen entered details gathered from witnesses into the National Crime Information Center (NCIC) database, which generated information associated with [Wells’s] driver’s license. This information included [Wells’s] full name, driver’s license number, date of birth, and Engblad Drive address. Nguyen immediately reported this information to Barron. At 7:48 p.m., Nguyen attached the NCIC return with [Wells’s] information to the centralized “call sheet” record—an electronic database used to post updates in a developing investigation.

Meanwhile, [Wells] called his former girlfriend, Valricia Brooks, with whom he shared a daughter, and told her what had happened. At the time of the call, Brooks was walking in a park with her friend, Brittany Minor, who overheard the conversation. [Wells] told Brooks that he had shot and killed Chanice, Annette, and E.M. and that he was thinking about leaving, but he only had one bullet left in his gun and ninety-seven miles remaining before running out of gas. Minor described [Wells] as sounding “distraught ... talking fast, frantic, remorseful, [and] crying.” At some point, the call became a three-way conversation between [Wells], Brooks, and [Wells’s] brother, Amron Wells, whom [Wells] had also told about the shootings. [Wells] asked Amron to take care of his daughter and indicated that he intended to drive somewhere and shoot himself. Brooks arranged a phone call between [Wells] and his daughter, and then told [Wells] to turn himself in.



At approximately 7:30 p.m., [Wells] walked into the Forest Hills Police Department lobby and, in a rambling and incoherent manner, blurted, “Put me in jail; kill me.” Noting that [Wells] was a “sweaty, big guy, muscular, [and] had a dazed kind of spacey look on him,” Sergeant Christopher Hebert handcuffed him as a safety precaution. He described [Wells’s] demeanor as being “like a calm storm ... calm demeanor but aggressive,” and “look[ing] like he could [ ] explode any second.” Hebert sat with [Wells] in the lobby and explained that he could not arrest him without more information. [Wells], using two- to three-word sentences, kept repeating that something bad had happened and that the officers would soon hear about it. [Wells] briefly mentioned that he had been in Fort Worth, but he did not provide further details. From tattoos on [Wells’s] arms, Forest Hills officers eventually discerned his name and birthdate, facts [Wells] confirmed. They called the Fort Worth Police Department to inquire further and were told to detain [Wells] until Fort Worth officers could pick him up for questioning about a homicide that had happened in Fort Worth that evening.

Fort Worth officers transported [Wells] to a Fort Worth police station where Detectives Barron and Tim O’Brien attempted to interview him around 8:35 p.m. Without reading *Miranda*<sup>2</sup> warnings, Barron began by asking [Wells] routine questions such as his name, birthdate, and address, all of which [Wells] provided. He then asked [Wells] questions such as: what he had done that day; why he went to the Forest Hills station; whether he had been on Pate Street; and what had happened on Pate Street. [Wells] denied being on Pate Street that day. When Barron asked [Wells] to tell him what had happened on Pate Street, [Wells] stated repeatedly, “You tell me what happened.” After forty-one minutes of questioning and an eight-minute break without obtaining useful information, the detectives stopped [Wells’s] interview and focused on interviewing other people who had been asked to provide statements at the station. By 1:00 a.m. on July 2, Barron determined that he had probable cause to arrest [Wells] and search his residence. Barron obtained a search warrant for [Wells’s] residence at 1:55 a.m.

Evidence gathered in the search included: an undegraded empty cardboard .9 millimeter ammunition box found in a toilet tank; an opened .9 millimeter ammunition box that contained thirty-eight of fifty unspent cartridges matching the spent cartridge casings found at the crime scene; a gun magazine loaded with thirteen .9 millimeter rounds; an otherwise empty plastic handgun case that contained a single

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

unspent .9 millimeter round; and a home security system control box, which contained time-stamped video recordings depicting four different camera angles of the driveway and front door areas. Video from one of the cameras showed [Wells] backing out of the driveway alone in his Tahoe at 5:39 p.m. on July 1, shortly before the offense. The same video showed [Wells's] brother returning alone in the Tahoe at 7:16 p.m.

After the search, Barron obtained an arrest warrant at 4:00 a.m. Barron returned to Appellant's interview room at 4:20 a.m. and informed him that he was being charged with capital murder. Barron read [Wells] his *Miranda* rights, which Appellant waived. Barron then re-interviewed [Wells]. [Wells] broke down crying and eventually confessed in detail to the murders of Chanice, Annette, and E.M. Around 2:22 p.m., Barron obtained a search warrant for [Wells's] Tahoe. That search revealed gunshot residue on the leather steering wheel cover. The gun used in the offense was not recovered.

*Wells v. State*, 611 S.W.3d 396, 402–05 (Tex. Crim. App. 2020).

## II. Procedural Posture

Wells was convicted and sentenced to death in November 2016. SHCR 1:11-15. On direct appeal, the CCA affirmed his conviction and sentence on November 18, 2020. *Wells*, 611 S.W.3d at 396. Pursuant to Texas Code of Criminal Procedure article 11.071, Wells filed his application for writ of habeas corpus in the trial court on April 18, 2019. SHCR 1:17. The trial court entered its recommendation to deny relief on Wells's application on August 10, 2021. Supp. SHCR<sup>3</sup> 2:156-57. The CCA denied Wells's application for writ of habeas corpus on December 15, 2021. *Ex parte Wells*, No. WR-86,784-01, 2021 WL 5917724 (Tex. Crim. App. 2021). The instant petition followed.

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<sup>3</sup> "Supp. SHCR" refers to the Supplemental Clerk's Record of pleadings and documents filed with the clerk during Wells's state habeas proceedings.

## SUMMARY OF ARGUMENT

“Review on a writ of certiorari is not a matter of right, but of judicial discretion.” Sup. Ct. R. 10. As such, this Court only grants petitions for a writ of certiorari for “compelling reasons.” Sup. Ct. R. 10. The present petition presents no compelling reasons for this Court to grant the petition. Wells contends that the state court “bypassed” mandatory statutory procedures, thus depriving him of an opportunity to prove his case and violating his right to due process of law. *See* Petition at 18-25. Wells’s arguments misconstrue the requirements of Texas’s habeas statute and are without merit.

Wells’s habeas claims were thoroughly adjudicated by the state court in compliance with Texas’s statutory requirements, and the CCA properly denied habeas relief. Further, this Court has denied certiorari review on a nearly identical petition in the past. As such, this Court should likewise deny certiorari review of the present petition.

## ARGUMENT

### **I. The state court complied with state statutory requirements in the adjudication of Wells’s habeas application, thus affording Wells sufficient due process.**

Texas Code of Criminal Procedure Article 11.071 establishes the procedures for an application for writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death. *See* Tex. Code Crim. Proc. art. 11.071, § 1. Wells contends that the state court substantially deviated from the procedures outlined in Sections 8 and 9 of Article<sup>4</sup> 11.071 by deciding his case without conducting an evidentiary hearing, thus violating his right to due process. *See* Petition at 18–25. Specifically, he argues that the state court deprived him of the ability to present evidence to prove his claims, thus depriving him “of adequate and effective review of his death sentence.” *See* Petition at 24–25. Wells seeks certiorari review to afford him a fair opportunity to challenge the constitutionality of his death sentence in accordance with Article 11.071.

But the state court complied with the requirements of Article 11.071 in adjudicating Wells’s claims when it determined that a live evidentiary hearing was unnecessary because there existed no controverted, previously unresolved factual issues material to the legality of Wells’s confinement. *See* Tex. Code Crim. Proc. art. 11.071, § 8(a). Therefore, certiorari review of Wells’s petition must be denied.

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<sup>4</sup> Unless otherwise indicated, all references to “Articles” are to the Texas Code of Criminal Procedure.

## **A. Relevant Statutory Provisions**

Wells's claim implicates Sections 8 and 9 of Article 11.071. *See, generally,* Petition. These provisions provide, in relevant part:

### **Sec. 8. Findings of Fact Without Evidentiary Hearing**

(a) Not later than the 20th day after the last date the state answers the application, the convicting court shall determine whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist and shall issue a written order of the determination.

(b) If the convicting court determines the issues do not exist, the parties shall file proposed findings of fact and conclusions of law for the court to consider on or before a date set by the court that is not later than the 30th day after the date the order is issued.

(c) After argument of counsel, if requested by the court, the convicting court shall make appropriate written findings of fact and conclusions of law not later than the 15th day after the date the parties filed proposed findings or not later than the 45th day after the date the court's determination is made under Subsection (a), whichever occurs first.

### **Sec. 9. Hearing**

(a) If the convicting court determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist, the court shall enter an order, not later than the 20th day after the last date the state answers the application, designating the issues of fact to be resolved and the manner in which the issues shall be resolved. To resolve the issues, the court may require affidavits, depositions, interrogatories, and evidentiary hearings and may use personal recollection.

(b) The convicting court shall hold the evidentiary hearing not later than the 30th day after the date on which the court enters the order designating issues under Subsection (a). The convicting court may grant a motion to postpone the hearing, but not for more than 30 days, and only if the court states, on the record, good cause for delay.

(c) The presiding judge of the convicting court shall conduct a hearing held under this section unless another judge presided over the original capital felony trial, in which event that judge, if qualified for assignment under Section 74.054 or 74.055, Government Code, may preside over the hearing.

(d) The court reporter shall prepare a transcript of the hearing not later than the 30th day after the date the hearing ends and file the transcript with the clerk of the convicting court.

(e) The parties shall file proposed findings of fact and conclusions of law for the convicting court to consider on or before a date set by the court that is not later than the 30th day after the date the transcript is filed. If the court requests argument of counsel, after argument the court shall make written findings of fact that are necessary to resolve the previously unresolved facts and make conclusions of law not later than the 15th day after the date the parties file proposed findings or not later than the 45th day after the date the court reporter files the transcript, whichever occurs first.

Tex. Code Crim. Proc. art. 11.071, §§ 8, 9.

Notably, Wells acknowledges that compliance with these provisions satisfies the mandates of due process. *See* Petition at 16 (“Here, due process merely required following Texas’s mandatory statutory procedure.”); 23 (“The Article 11.071 mechanisms for the court to take evidence would have satisfied due process.”).

## **B. Relevant Facts**

Wells filed his application for writ of habeas corpus in the state trial court on April 18, 2019. SHCR 1:17. Along with his application, Wells filed 188 exhibits in support of his claims. *See* SHCR volumes 2, 3, 4, and 5. Wells’s exhibits included, among other things, declarations from seven experts, 24 laypersons, and three jurors; hospital, mental health, and school records for Wells and other family members; and

several newspaper and scholarly articles. *See, generally*, SHCR volumes 2, 3, 4, and 5.

Before the State filed its response, it filed motions requesting the trial court to order Wells’s trial and appellate counsel to submit affidavits “addressing in detail each of Wells’s contentions that he was denied his right to effective assistance of counsel.” SHCR 5:149, 156. The State also filed a motion requesting the trial court allow the State to disclose Wells’s mental health record exhibits to its own mental-health experts. SHCR 5:162–63. After the trial court granted the State’s motions<sup>5</sup>, Wells filed a motion for reconsideration of the trial court’s orders for affidavits. SHCR 5:180–93. Wells argued that ordering his counsel to file affidavits was premature because the trial court had not yet entered an order designating issues to be resolved. SHCR 5:182–84. Similarly, Wells argued that the trial court’s order failed to comply with Article 11.071, thus violating his right to due process. SHCR 5:188–89. Wells also argued that the trial court’s order for affidavits would likely prejudice Wells’s attorney-client privilege. SHCR 5:184–88. The trial court denied Wells’s motion for reconsideration of its order for trial and appellate counsel affidavits on July 8, 2019.<sup>6</sup> SHCR 5:261–62.

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<sup>5</sup> The state court granted the State’s motions on May 10, 2019. SHCR 5:172-78. The state court ordered Wells’s counsel to file affidavits addressing his claims on or before July 1, 2019. SHCR 176-78.

<sup>6</sup> Prior to the trial court’s ruling, the State filed a response to Wells’s motion for reconsideration (SHCR 5:204), Wells filed a reply to the State’s response (SHCR 5:222), and Wells filed a motion for a ruling on his motion for reconsideration and objection to the court’s failure to issue a ruling (SHCR 5:243).

Wells’s trial and appellate counsel complied with the court’s order and filed detailed affidavits. On October 15, 2019, the State filed its answer to Wells’s application, along with four exhibits: (1) an affidavit from J. Randall Price, Ph.D.; (2) Texas Department of Criminal Justice (TDCJ) Administrative Directive 04.17 (rev. 3); (3) TDCJ Administrative Directive 04.11; and (4) e-mail exchanges between TDCJ personnel and a Tarrant County Assistant Criminal District Attorney. SHCR 1:453 – 2:3–177. In its answer, the State argued that the writ record was sufficient to resolve Wells’s claims and that an evidentiary hearing was not necessary. SHCR 1:453. Wells then filed a reply to the State’s answer and a “motion to designate issues of fact to be resolved at an evidentiary hearing.” Supp. SHCR 1:8-60. Wells argued that there were controverted, previously unresolved issues of material fact, and he requested the trial court conduct an evidentiary hearing. Supp. SHCR 1:9.

On November 6, 2019, the trial court held a hearing on Wells’s motion to designate issues of fact. SHRR<sup>7</sup> 1:1. At the hearing, the trial court asked Wells’s habeas counsel to explain why an evidentiary hearing was necessary in light of the large amount of exhibits, affidavits, and declarations already in the habeas record. SHRR 1:5. Wells’s habeas counsel argued that live testimony was a better way to reach the merits of his case, as opposed to affidavits and declarations, because it would help the trial court determine the credibility of witnesses. SHRR 1:11. They also argued that the case was at the pleading stage of the writ proceedings, and Wells

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<sup>7</sup> “SHRR” refers to the Reporter’s Record, or hearing transcript, in Wells’s state habeas proceedings.



had a due process right to put on evidence to meet his burden of proof. SHRR 1:15. In regard to Wells's claim in the present petition, his habeas counsel argued that live testimony from trial counsel was necessary to determine whether the strategy to present a punishment defense based on genetics was reasonable. SHRR 1:19–20. However, Wells's habeas counsel agreed with the trial court that they had put forward their entire case theory and “this is not something that there's more to be discovered or necessarily you have additional information or evidence that you would like to ask people[.]” SHRR 1:22.

At the hearing on Wells's motion, the State argued that Article 11.071 does not require a live evidentiary hearing in all cases. SHRR 1:24. The State advised the trial court that it could make credibility determinations based on the declarations and affidavits in the record. SHRR 1:25. Most importantly, the State argued an evidentiary hearing was not required because even if the trial court took everything in Wells's application and exhibits as true, Wells could not prevail on his claims. SHRR 1:25. The State noted that the evidence Wells presented was largely cumulative of the evidence presented at trial and any additional exhibits not presented at trial were not so significant that they would have produced a different outcome. SHRR 1:26. The State clarified that, although its answer stated that the State “denies the allegations in the instant application for writ of habeas corpus,” it did not dispute the contents of Wells's declarations or the credibility of his witnesses; as such, an evidentiary hearing was not required under Article 11.071. SHRR 1:26. The State explained that it is standard practice in Tarrant County, Texas, for the

State to investigate the allegations in a writ of habeas corpus application and then file a reply; doing such does not put the facts in contradiction or require an evidentiary hearing. SHRR1:32. For these reasons, Article 11.071 had been complied with, and Wells was not entitled to an order designating issues or any further factual development. SHRR 1:32.

At the conclusion of the hearing on Wells's motion, the trial court took the matter under advisement and invited Wells's habeas counsel to amend their motion if there were any additional arguments or facts that would necessitate an evidentiary hearing. SHRR 1:36. Despite the trial court's invitation, Wells did not amend his motion or present any further argument on the matter. In fact, Wells took no action in his case for almost an entire year.

On September 4, 2020, the State asked the trial court to order the parties to prepare proposed findings of fact and conclusions of law on Wells's writ application. Supp. SHCR 1:94–97. Wells responded, arguing first that such an order was premature, and second that the trial court must conduct a fact-finding process to resolve unspecified factual disputes. Supp. SHCR 1:100–17. The trial court took no action on either the motion or the response.

On May 24, 2021, the State filed a second motion asking the trial court to order the parties to prepare proposed findings of fact and conclusions of law.<sup>8</sup> Supp. SHCR

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<sup>8</sup> In the time between the State's motions, the CCA issued an order directing the trial court to resolve Wells's writ application within 180 days, or by July 12, 2021. *Ex parte Wells*, WR-86,184-01, Order. The trial court subsequently requested, and was granted, an extension of time to resolve the issues in Wells's case by August 11, 2021. Supp. SHCR 1:127–32.

1:121–25. In reply, Wells requested that the trial court rule on his motion for an evidentiary hearing and an alternative request for fact-finding. Supp. SHCR 1:133–43. Wells further asked the trial court to enter an order designating issues for resolution and reiterated his previous arguments regarding his perceived need for an evidentiary hearing. Supp. SHCR 1:133–43. The State responded, arguing that such an order was untimely and in direct violation of the CCA’s directive for the trial court to resolve Wells’s case by August 11, 2021. Supp. SHCR 391–96.

On June 25, 2021, the trial court entered an order specifically finding that there were “no controverted, previously unresolved factual issues material to the legality of [Wells’s] confinement.” Supp. SHCR 1:390 (citing Tex. Code Crim. Proc. art. 11.071, § 8(a)). Therefore, the trial court ordered the parties to file proposed findings of fact and conclusions of law by July 24, 2021. Supp. SHCR 1:390 (citing Tex. Code Crim. Proc. art. 11.071, § 8(b)). The State filed its proposed findings of fact and conclusions of law on June 30, 2021. Supp. SHCR 1:409. Wells filed his proposed findings of fact and conclusions of law on July 26, 2021. Supp. SHCR 2:62.

After reviewing the parties proposed findings of fact and conclusions of law, the trial court determined that the State’s proposed findings and conclusions were supported by the record and legally sound; therefore, the trial court adopted the State’s proposed findings and conclusions as its own and recommended that the CCA deny Wells habeas relief.<sup>9</sup> Supp. SHCR 2:156–57. The CCA independently reviewed

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<sup>9</sup> The trial court adopted the State’s findings and conclusions in their entirety, with two non-substantive modifications. Supp. SHCR 2:156–57.

the habeas record in this case. *Ex parte Wells*, 2021 WL 5917724, at \*2. Like the trial court, the CCA found that Wells failed to meet his burden to prove this claims. *Id.* Therefore, the CCA adopted the trial court’s findings of fact and conclusions of law and denied Wells habeas relief.<sup>10</sup> *Id.*

**C. The state court proceedings complied with Article 11.071 and afforded Wells due process.**

Wells contends that the state court “bypassed” mandatory procedures outlined in Article 11.071, thus depriving him of an opportunity to prove his case and violating his right to due process of law. *See* Petition at 18–25. Specifically, Wells argues that his habeas application and the State’s answer presented the state court with controverted facts, which required the trial court to engage in additional fact-finding to resolve his claims. *See* Petition at 22–25. Because the trial court resolved his claims based on the habeas record, instead of conducting an evidentiary hearing, Wells argues he was deprived an opportunity to be heard, and the proceedings were fundamentally unfair. *See* Petition at 24. These arguments misconstrue the requirements of Article 11.071 and are without merit.

The state court proceedings afforded to Wells complied with all statutory requirements of Article 11.071 and were constitutionally sufficient to allow review of his state habeas claim. Therefore, certiorari review should be denied.

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<sup>10</sup> The CCA found that one of the trial court’s findings of fact was not supported by the record and declined to adopt that finding; otherwise, the CCA adopted the trial court’s findings and conclusions in their entirety. *Ex parte Wells*, 2021 WL 5917724, at \*2.

**1. The state courts complied with Article 11.071 throughout Wells's state habeas proceedings.**

The requirements of Article 11.071 are straightforward and clearly outline the steps Texas courts must follow in resolving capital writ applications. An applicant must file his application for a writ of habeas corpus in the trial court of his conviction. Tex. Code Crim. Proc. art. 11.071, § 4(a). The State is permitted to file an answer to the application. *Id.* § 7(a).

After the parties have filed their pleadings and pursuant to Article 11.071, Section 8, entitled “Findings of Fact *Without an Evidentiary Hearing*,” the trial court must “determine whether controverted, previously unresolved factual issues material to the legality of the applicant’s confinement exist.” *Id.* § 8(a) (emphasis added). The trial court must issue a written order determining whether such factual issues exist. *Id.* If the court finds that there are no controverted, previously unresolved fact issues, the parties are to submit proposed findings of fact and conclusions of law for the trial court’s consideration. *Id.* § 8(b). It is only when the trial court finds that there are controverted, previously unresolved fact issues, and it issues an order designating the issues to be resolved, that the court is required to engage in further proceedings to resolve the issues. *Id.* § 9(a).

Here, Wells filed his application in the appropriate trial court, accompanied by a substantial number of exhibits. The State then engaged in its own investigation before filing its answer. This included obtaining affidavits from Wells’s trial and appellate counsel addressing his claims. While this step of the proceedings is not explicitly outlined in Article 11.071, it is standard practice in Texas and has been

approved by the CCA and at least one federal court. *See, e.g., Ex parte Nelson*, No. WR-82,814-01, 2015 WL 6689512 (Tex. Crim. App. Oct. 14, 2015) (unpublished) (denying habeas relief based on the trial court’s findings of fact and conclusions of law despite the trial court not holding an evidentiary hearing); *Nelson v. Davis*, No. 4:16-CV-904-A, 2017 WL 1187880 (N.D. Tex. Mar. 29, 2017) (unpublished) (noting resolution of applicant’s state habeas claims through use of affidavits ordered prior to the State’s answer and no evidentiary hearing).<sup>11</sup> Further, nothing in Article 11.071 precludes evidentiary development beyond what is considered in Article 11.071, Section 9. *See Storey*, 2014 WL 11498164, at \*7 (recognizing that the statutory text of Article 11.071, Sections 8 and 9 do not prohibit State’s submission of trial-counsel affidavits prior to answering and outside an evidentiary hearing).

After its investigation, the State filed its answer in accordance with Article 11.071, Section 7. SHCR 1:453 – 2:177. At that point, it was incumbent upon the trial court to determine whether there were controverted, previously unresolved factual issues that required a designation of issues for resolution. Tex. Code Crim. Proc. art. 11.071, § 8(a). Although not required to do so, the trial court conducted a hearing to allow the parties to argue whether there were controverted, previously unresolved factual issues. *See SHRR 1:5*. At the hearing, Wells had a full opportunity to address

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<sup>11</sup> The CCA and the District Court for the Northern District of Texas have approved this procedure in additional cases, as well. *See, e.g., Ex parte Hummel*, No. WR-81,578-01, 2016 WL 537608 (Tex. Crim. App. Feb. 10, 2016) (unpublished), *and Hummel v. Davis*, No. 4:16-CV-00133-O, 2018 WL 276331 (N.D. Tex. Jan. 3, 2018) (unpublished); *Ex parte Storey*, No. WR-75,828-01, 2011 WL 2420707 (Tex. Crim. App. June 15, 2011) (unpublished), *and Storey v. Stephens*, No. 4:11-CV-433-O, 2014 WL 11498164 (N.D. Tex. June 9, 2014) (unpublished).

the trial court and present his arguments as to what factual issues were controverted and previously unresolved. SHRR 1:10–24. Wells’s habeas counsel was unable to articulate any material fact in dispute. SHRR 1:10-24. At the conclusion of the hearing, the trial court indicated that it was not inclined to designate issues and conduct an evidentiary hearing, but it still invited Wells’s habeas counsel to submit additional briefing on why a hearing was necessary. SHRR 1:36. Wells’s habeas counsel did not take the trial court up on its invitation. These steps are outside of the requirements of Article 11.071, and thus provided Wells *more* process in resolving his claims than is contemplated by Texas’s statutory scheme.

Ultimately, the trial court determined that there were no controverted, previously unresolved factual issues in this case, and it ordered the parties to submit findings of fact and conclusions of law in accordance with Article 11.071, Section 8(b). Supp. SHCR 1:390. In making its determination, the trial court considered the entire habeas record, which included the exhibits filed by both Wells and the State. Supp. SHCR 1:390.

In his present petition, Wells argues that the trial court erroneously concluded that there were no controverted, previously unresolved factual issues because the State disputed his allegations through its answer and exhibits. *See* Petition at 22. Thus, Wells contends, the proper procedure at this juncture was for the trial court to find that there were unresolved factual issues, designate those issues for resolution, and conduct fact-finding pursuant to Article 11.071, Section 9. *See* Petition at 22–25. In this regard, Wells misinterprets the purpose of designating issues and conducting

further proceedings as provided for in Section 9 of Article 11.071. An evidentiary hearing is designed to resolve controverted, *previously unresolved* factual issues. *See* Tex. Code Crim. Proc. art. 11.071, § 9(a) (emphasis added). The purpose of a hearing is not to allow an applicant to develop factual issues for the first time. *Id.* By the time the trial court issued its order that there were no factual issues requiring further resolution, there had been substantial evidentiary development through the use of habeas exhibits submitted by both parties. Therefore, the habeas record was sufficient to resolve any factual disputes.

Further, the State's answer and its argument at the hearing on Wells's motion to designate issues did not dispute Wells's factual claims. Rather, the State disputed Well's legal arguments and claims for relief. At the hearing, the State explicitly informed the trial court that it "didn't necessarily dispute the contents of any of [Wells's] declarations" in its answer. SHRR 1:26. Further, the State argued that Wells could not prevail on his claims even if the trial court accepted Wells's exhibits as true. SHRR 1:25. As further fact-finding is only required by Article 11.071 when there are controverted, previously unresolved *factual* issues, the trial court properly found that there were no such issues in need of further resolution. *See* Tex. Code Crim. Proc. art. 11.071, § 9(a) (emphasis added).

Because the trial court found that there were no controverted, previously unresolved factual issues, it was proper for the trial court to order the parties to submit proposed findings of fact and conclusions of law without conducting an evidentiary hearing or other means of evidentiary discovery. *Id.* § 8(b). After the



parties submitted their proposed findings and conclusions, the trial court entered its findings and conclusions and made a recommendation that the relief Wells requested be denied in accordance with Article 11.071, Section 8(c). *Id.* § 8(c). The trial court’s findings and conclusions were forwarded to the CCA in compliance with Article 11.071, Section 8(d). *Id.* § 8(d). The CCA properly reviewed Wells’s application and the habeas record, adopted the trial court’s findings and conclusions, and denied Wells habeas relief pursuant to Article 11.071, Section 11. *Ex parte Wells*, 2021 WL 5917724, at \*2; *see also* Tex. Code Crim. Proc. art. 11.071, § 11.

Throughout Wells’s state court habeas proceedings, the state courts complied with Texas’s statutory procedures for applications for writ of habeas corpus in capital cases. As such, the state court afforded Wells sufficient due process of law in resolving his claims. This Court should deny certiorari review in this case.

**2. Regardless of the state court’s compliance with Article 11.071, the state court proceedings afforded Wells due process.**

As Wells recognizes, the “fundamental requisite of due process of law is the opportunity to be heard.” *Ford v. Wainwright*, 477 U.S. 399, 413 (1986) (citing *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)); *see also Townsend v. Sain*, 372 U.S. 292, 312 (1963) (availability of habeas corpus “presupposes the opportunity to be heard, to argue and present evidence”); Petition at 16. Such an opportunity to be heard does not require an evidentiary hearing in every case. *Tercero v. Stephens*, 738 F.3d 141, 148 (5th Cir. 2013), *cert. denied* 573 U.S. 949 (2014) (“[habeas] petitioners are not guaranteed evidentiary hearings because ‘due process does not require a full trial on the merits,’ instead, petitioners are guaranteed only the ‘opportunity to be

heard”) (quoting *Rivera v. Quarterman*, 505 F.3d 349, 358 (5th Cir. 2007), *cert. denied* 555 U.S. 827 (2008)).

Indeed, due process does not require a full evidentiary hearing in the absence of disputed material facts. When the facts material to the issue are not in dispute, whether to grant an evidentiary hearing, is left to the judge’s discretion. *See Townsend*, 372 U.S. at 312–18; *see also Schriro v. Landrigan*, 550 U.S. 465, 473 (2007) (citing *Townsend* rule in post-AEDPA context and noting that “[t]hat basic rule has not changed.”); *Noorlander v. U.S. Atty. Gen.*, 465 F.2d 1106, 1108 (8th Cir. 1972), *cert. denied* 410 U.S. 938 (1973) (“While due process frequently requires that an evidentiary hearing be afforded in a habeas corpus proceeding, such a hearing is neither required nor could it be meaningful in cases such as this where there are no material facts in dispute.”). As previously discussed, Wells had ample opportunity to be heard throughout the state habeas proceedings and the trial court explicitly found that there were no controverted, i.e. disputed, facts material to the resolution of Wells’s state habeas claims. The state court afforded Wells due process in its resolution of his state habeas application. *See Tercero*, 738 F.3d at 148 (concluding that the state court provided petitioner a full opportunity to be heard despite not conducting an evidentiary hearing); *see also Townsend*, 372 U.S. at 312–18.

Much of Wells’s claim that he was deprived due process centers on his perceived inability to present evidence to support his claims. As such, Wells repeatedly asserts that the state court proceedings prevented him from submitting evidence. This accusation is untrue. Wells filed a state habeas petition and attached

188 exhibits in support of his claims (SHCR 1:17–452; *see generally* SHCR volumes 2, 3, 4, and 5); Wells also filed a written opposition to the trial court’s order for affidavits from his trial and appellate counsel (SHCR 5:180–93). Affidavits were filed and the State responded to Wells’s application with exhibits of its own. SHCR 1:453 – 2:3-177. Wells filed a written reply to the State’s answer and a motion to designate issues for future resolution (Supp. SHCR 1:8–60); the state court ordered a hearing on Wells’ motion, at which Wells argued that an evidentiary hearing was necessary in his case (SHRR 1:11). The trial court even provided Wells the opportunity to submit additional argument supporting his contention that an evidentiary hearing was needed after the hearing on the issue and waited a year before taking further action, but Wells did not submit any further argument. SHRR 1:36. Ultimately, the trial court determined that there were no controverted, previously unresolved factual issues that necessitated a hearing. Supp. SHCR 1:390. Immediately thereafter, the State submitted proposed findings of fact and conclusions of law for the trial court’s consideration. Supp SHCR 1:409. Wells, however, submitted five substantive motions to the court prior to submitting his own proposed findings of fact and conclusions of law to the trial court.<sup>12</sup> Both the State’s and Wells’s proposed findings and conclusions

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<sup>12</sup> The five additional motions were:

- Request for this Court to Rule on Mr. Wells’s Motion for Evidentiary Hearing and Alternative Fact-Finding (Supp. SHCR 1:133);
- Motion to Enter Exhibits into Evidence in Support of the Allegations in Mr. Wells’s Initial Application (Supp. SHCR 1:144);
- Motion to Enter Exhibits into Evidence in Support of the Allegations in Mr. Wells’s Initial Application – Exhibits 189-201 (Supp. SHCR 1:149);
- Motion for Argument to Occur After Proposed Findings of Fact and Conclusions of Law are Filed (Supp. SHCR 1:398); and

were based on the pleadings, habeas exhibits, and trial record. Supp. SHCR 1:409; 2:62.

If what Wells is implying is that the trial court did not accept his exhibits or failed to consider them, that is also misleading. As noted, Wells submitted 188 exhibits with his initial application. *See, generally*, SHCR volumes 1, 2, 3, 4, and 5. On June 24, 2021, Wells filed an additional 13 exhibits and a written motion asking the court to admit all of his exhibits into evidence. Supp. SHCR 1:145-389. The State filed a written response, advising the trial court that it need not formally admit Wells's exhibits into evidence because it could properly consider both parties' exhibits in resolving Wells's claims. Supp. SHCR 1:394. Sections 8(a) and 8(b) of Article 11.071 permit the trial court to consider such exhibits. *See* Tex. Code Crim. Proc. art. 11.071, §§ 8(a)-(b). The record reflects that the trial court did, in fact, consider all of the exhibits when it determined that there were no controverted, previously unresolved factual issues. *See* Supp. SHCR 1:390 (noting that the trial court reviewed “[Well’s] Application for Writ of Habeas Corpus, the State’s Reply, Applicant’s Reply to the State’s Answer and Motion to Designate Issues of Fact to Be Resolved at an Evidentiary Hearing, the parties’ arguments at the hearing on November 6, 2019, and *the habeas and trial records*”) (emphasis added). Further, the trial court’s findings of fact and conclusions of law note that it considered “the exhibits filed by

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- Objection to State’s Reliance on Non-Evidence, Misstatements of Mr. Wells’s Allegations, and Incorrect Legal Standards in its Proposed Findings (Supp. SHCR 2:55).

These motions were either denied by the trial court, or not ruled on prior to the court issuing its findings of fact and conclusions of law.

each party” in making its findings and conclusions and Wells’s exhibits are repeatedly cited to in the findings and conclusions. Supp. SHCR 1:411 – 2:43 (State’s proposed findings of fact and conclusions of law, adopted by the trial court). Any suggestion that the state court refused to accept or consider Well’s evidence is simply untrue.

Given the amount of evidentiary development allowed through the filing of exhibits, the hearing on Wells’s motion to designate issues at which Wells was allowed the opportunity to argue for an evidentiary hearing, the trial court’s invitation to Wells to provide additional argument for the necessity of a hearing, and the sheer amount of written motions and responses in the state habeas proceedings, Wells cannot credibly contend that he did not have “the opportunity to be heard” in state court. *Townsend*, 372 U.S. at 312. Wells was afforded substantial due process by the state court’s use of the procedures in Article 11.071 and additional proceedings in resolving his case. This Court should deny certiorari review in this case.

## **II. This Court has previously denied certiorari on nearly identical claims.**

In 2016, John William Hummel presented this Court with a petition for a writ of certiorari similarly arguing that he was denied due process in his Texas habeas proceedings challenging his conviction for capital murder and death sentence. *See* Petition for a Writ of Certiorari at 20–28, *Hummel v. Texas*, 137 S. Ct. 63 (2016) (No. 15-9284). Like Wells, Hummel raised, among other things, ineffective assistance of counsel in his state habeas application. *Id.* The habeas trial court ordered Hummel’s counsel to file affidavits addressing his claims. *Id.* The habeas trial court issued findings of fact and conclusions of law recommending denial of relief without

conducting an evidentiary hearing. *Ex parte Hummel*, No. WR-81,578-01, 2016 WL 537608 (Tex. Crim. App. Feb. 10, 2016). The CCA denied Hummel habeas relief. *Id.*

In his petition for writ of certiorari, Hummel argued that the state court substantially deviated from Article 11.071 by failing to conduct an evidentiary hearing to address his claims, thus violating his right to due process. *See* Petition for a Writ of Certiorari at 20–28, *Hummel v. Texas*, 137 S. Ct. 63 (2016) (No. 15-9284). Like Wells, Hummel argued that the lack of an evidentiary hearing deprived him of “any meaningful opportunity to present evidence in support of the allegations he raised or to challenge evidence” against him. *Id.* at 20. The State of Texas responded, arguing that certiorari review should be denied because the state court had complied with Article 11.071 and allowed full development of Hummel’s claims. *See* Brief in Opposition, *Hummel v. Texas*, 137 S. Ct. 63 (2016) (No. 15-9284). This Court denied Hummel’s petition for certiorari review to the CCA. *Hummel v. Texas*, 137 S. Ct. 63 (2016).

The arguments Wells presents are remarkably similar to those presented by petitioner Hummel. *Compare* Petition at 10–28, *with* Petition for a Writ of Certiorari at 20–28, *Hummel v. Texas*, 137 S. Ct. 63 (2016) (No. 15-9284). Despite the similarities, and this Court’s previous denial of Hummel’s petition, Wells makes no effort to distinguish his case or the procedure used by the trial court under Article 11.071 in his petition for writ of certiorari. Like the petition in Hummel, the present petition presents no compelling reason for this Court to grant review. *See* Sup. Ct. R. 10. As such, Wells’s petition for a writ of certiorari should be denied.

## CONCLUSION

For the foregoing reasons, this Court should deny certiorari review.

Respectfully submitted,

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