

In The  
Supreme Court of the United States

---

AMOS WELLS,  
*Petitioner,*

v.

TEXAS,  
*Respondent.*

---

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

---

**REPLY TO BRIEF IN OPPOSITION**

---

OFFICE OF CAPITAL AND FORENSIC WRITS  
Benjamin B. Wolff, Director  
Ashley Steele\*  
ashley.steele@ocfw.texas.gov  
Michelle Ward  
michelle.ward@ocfw.texas.gov  
1700 N. Congress Ave., Ste. 460  
Austin, Texas 78701  
(512) 463-8600

*\* Counsel of Record for Petitioner  
Member, Supreme Court Bar*

*Counsel for Petitioner*

---

---

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... ii

INDEX TO APPENDICES ..... iii

REPLY TO BRIEF IN OPPOSITION ..... iv

I. THE STATE’S CLAIM THAT MR. WELLS RECEIVED EVIDENTIARY DEVELOPMENT LACKS ANY FACTUAL BASIS.....1

II. WITHOUT GIVING MR. WELLS NOTICE OR THE OPPORTUNITY TO BE HEARD, THE TRIAL COURT MADE FINDINGS OF FACT THAT RELIED EXCLUSIVELY ON THE STATE’S PROFFERS.....4

III. CONCLUSION.....6

## INDEX TO APPENDICES

- APPENDIX A Order, *Ex parte Wells*, No. WR-86,184-01 (Tex. Crim. App. Dec. 15, 2021) (denying relief)
- APPENDIX B Order, *Ex parte Wells*, No. C-432-W011509-1405275-A (432d Dist. Ct., Tarrant County, Tex. Aug. 10, 2021) (adopting the State’s proposed findings of fact and conclusions of law)
- APPENDIX C Order, *Ex parte Wells*, No. C-432-W011509-1405275-A (432d Dist. Ct., Tarrant County, Tex. Jun. 25, 2021) (finding no material fact issues and denying all factual development)
- APPENDIX D State’s Proposed Memorandum, Findings of Fact, and Conclusions of Law, *Ex parte Wells*, No. C-432-W011509-1405275-A (432d Dist. Ct., Tarrant County, Tex. Jun. 30, 2021)
- APPENDIX E Texas Code of Criminal Procedure, Article 11.071 (outlining the mandatory state post-conviction procedures in death penalty cases)
- APPENDIX F Order, *Ex parte Wells*, No. C-432-W011509-1405275-A (432d Dist. Ct., Tarrant County, Tex. Jun. 25, 2021)

## TABLE OF AUTHORITIES

### Cases

<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	8
<i>Evitts v. Lucey</i> , 469 U.S. 387 (1985).....	10
<i>Ex parte Medina</i> , 361 S.W.3d 633 (Tex. Crim. App. 2011) .....	5
<i>Ex parte Wells</i> , No. W011509 (432d Dist. Ct., Tarrant County, Tex. Jun. 24, 2021)..	7
<i>Ex parte Wells</i> , No. W011509 (432d Dist. Ct., Tarrant County, Tex. Sept. 11, 2020)	7
<i>Ex parte Wells</i> , No. W011509 (432d Dist. Ct., Tarrant, County, Tex. Oct. 29, 2019) .	7
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	6
<i>Theatre Enterprizes, Inc. v. Paramount Film Distrib. Corp.</i> , 346 U.S. 537 (1954) .....	8

### Statutes

FED. R. CIV. P. 12 .....	8
TEX. CODE CRIM. PROC. art. 11.071 .....	5, 6, 8
TEX. R. CIV. P. 301 .....	8

### Other Authorities

71 C.J.S. Pleading § 600 .....	8
--------------------------------	---

## REPLY TO BRIEF IN OPPOSITION

The State cannot have it both ways. Either Mr. Wells *was* able to submit evidence, or he was not. On the one hand, the State argues that there was “substantial evidentiary development” in which the court relied on exhibits, made findings about credibility, and resolved the disputed fact issues in the State’s favor. Respondent’s Brief in Opposition at 24. On the other hand, it recognizes the court found no disputed fact issues and claims the court only made legal conclusions. *See id.* at 12, 19, 24. If the first is true, the Court gave no notice that it was taking evidence and denied Mr. Wells any ability to rebut the State’s evidence. If the latter is true, the trial court was obligated to take Mr. Wells’s pleadings and proffers as true and make only legal conclusions, rather than holding Mr. Wells to a burden of proof that he was prevented from meeting. But that is not what happened. The State is forced to make this argument because the trial court’s actions did not follow the mandatory statutory procedure, denying Mr. Wells due process of law.

### **I. THE STATE’S CLAIM THAT MR. WELLS RECEIVED EVIDENTIARY DEVELOPMENT LACKS ANY FACTUAL BASIS**

Despite the State’s outlandish position, Mr. Wells was deprived of any opportunity to submit evidence and be heard. Mr. Wells’s pleading burden in his Application for Writ of Habeas Corpus (hereinafter “Application”) was to plead sufficient facts which, if true, might entitle him to relief. *See Ex parte Medina*, 361 S.W.3d 633 (Tex. Crim. App. 2011); *see also* TEX. CODE CRIM. PROC. art. 11.071, § 9(a). Mr. Wells’s Application alleged, *inter alia*, specific facts to support a Sixth Amendment claim that the performance of his trial counsel, which fell below the

prevailing professional norms and prejudiced him, was ineffective. *See Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

The State summarily denied all of the factual allegations in Mr. Wells’s post-conviction application for a writ of habeas corpus. *See State’s Reply to Application for Writ of Habeas Corpus* at 1 (“[T]he State of Texas . . . denies the allegations in the instant application for writ of habeas corpus.”) (hereinafter “Answer”). When disputed facts exist, Texas’s statutory procedure is clear: the trial court must provide notice of what material facts disputed and how it will resolve them. *See TEX. CODE CRIM. PROC. art. 11.071 §§ 8-9*. The enumerated methods for the trial court to resolve the factual disputes are live evidentiary hearings, depositions, interrogatories, affidavits, or the court’s personal recollection. *See id.* at § 9(a).

Mr. Wells diligently sought to present evidence. The court heard arguments from counsel regarding the need for an evidentiary hearing. *See PCHRR*. The trial court made no decision for over a year.<sup>1</sup> Eventually, the State filed a motion to bypass

---

<sup>1</sup> The State’s argument that Mr. Wells forfeited his right to factual development because he did not submit additional arguments to the trial court following the extensive argument on his motion for an evidentiary hearing—after Mr. Wells had submitted a detailed motion and laid out his arguments before the trial court—is baseless. Mr. Wells was under no duty to supplement his briefing and arguments for factual development and an evidentiary hearing. Mr. Wells’s arguments were clearly laid out for the court’s consideration. No additional briefing was necessary, much less required, for the trial court to be bound to the statutory procedure in Article 11.071, Section 9. The trial court was not exempted from abiding by the statute, merely because Mr. Wells rested on his arguments.

Moreover, the State’s assertions that Mr. Wells pleaded *all* of the available facts to prove his claims is patently false. Not only did Mr. Wells repeatedly explain to the trial court that he sought further factual development at an evidentiary hearing, *see, e.g., PCHRR* at 7 (“[Mr. Wells] has plainly met this low threshold [pleading burden] and must be afforded the opportunity to prove -- to prove his claims.”), *id.* (“[T]he case law is clear that Mr. Wells has not burden at this stage to prove his claims since this -- this is exactly what fact-finding is for.”), *id.* at 15 (“And so at this

the evidentiary development stage and Mr. Wells again explained the necessity for factual development. *See* Reply to State’s Motion Requesting This Court to Prematurely Order Findings of Fact and Conclusions of Law, *Ex parte Wells*, No. W011509 (432d Dist. Ct., Tarrant County, Tex. Sept. 11, 2020). Mr. Wells asked for the opportunity to be heard, not only at a hearing but by depositions, interrogatories, and/or by affidavit. On June 24, 2021, Mr. Wells requested the trial court rule on his 2019 motion for an evidentiary hearing, requested interrogatories and/or depositions in the event the court denied a hearing, and asked that the exhibits to his application be admitted into evidence to prove his allegations. *See* Request for this Court to Rule on Mr. Wells’s Motion for Evidentiary Hearing and Alternative Request for Fact-Finding, and Motion to Enter Exhibits into Evidence in Support of the Allegations in Mr. Wells’s Initial Application, *Wells*, No. W011509 (432d Dist. Ct., Tarrant County, Tex. Jun. 24, 2021). The next day, the trial court denied each of Mr. Wells’s requests to submit evidence, even denying his request to enter the exhibits attached to his application. *See* App.C. The court made a finding that no controverted, material issues of fact existed pursuant to Article 11.071, Section 8(a) and ordered the parties to submit proposed findings of fact under Section 8(b). App.F.

---

stage, we’re just at the pleading burden. We’re not at the stage where we have to prove any of his claims by a preponderance of the evidence or any other heightened standard. We’re at the stage where we have pled claims sufficient to put on evidence to support and prove up the claims that are in our application.”), but Mr. Wells also demonstrated the type of information that he expected to develop at an evidentiary hearing by attaching additional affidavits to his motion for an evidentiary hearing. *See* Reply to State’s Answer and Motion to Designate Issues of Fact to be Resolved at an Evidentiary Hearing, *Ex parte Wells*, No. W011509 (432d Dist. Ct., Tarrant County, Tex. Oct. 29, 2019). The State’s claim that Mr. Wells abandoned his position regarding factual development by agreeing with the court that he was diligent in meeting his pleading burden is erroneous.

After issuing an order that no disputes needed resolving, the trial court was obligated to assume Mr. Wells's allegations to be true and make only legal conclusions. When no factual disputes exist, Section 8 requires the court to issue findings without accepting any evidence; the court makes its findings based solely on the pleadings. TEX. CODE CRIM. PROC. art. 11.071, § 8(a), (b). The State's request to proceed under Section 8 is analogous to moving for judgment notwithstanding the verdict or judgment on the pleadings in a civil case. *Cf.* TEX. R. CIV. P. 301; FED. R. CIV. P. 12(b)(6), (c); *see also* 71 C.J.S. Pleading § 600 ("A motion for judgment on the pleadings presents a challenge to the legal effect of given facts rather than on proof of the facts themselves; in this respect, it is essentially a delayed motion to dismiss."). When one party asks a court to dispose of the case without evidentiary development, "the trial court must strictly construe all evidence in the record against the movant and liberally in favor of the opponent." 71 C.J.S. Pleading § 600. This Court has long recognized the rule that a judge "must accept as true all of the factual allegations contained in the complaint" as having been "well settled since well before our decision in *Theatre Enterprises, [Inc. v. Paramount Film Distrib. Corp., 346 U.S. 537 (1954)]*." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 572 (2007) (Stevens, J., dissenting).

**II. WITHOUT GIVING MR. WELLS NOTICE OR THE OPPORTUNITY TO BE HEARD, THE TRIAL COURT MADE FINDINGS OF FACT THAT RELIED EXCLUSIVELY ON THE STATE'S PROFFERS**

Although the trial court informed the parties that it found no disputed material fact issues in need of resolution, it nevertheless proceeded to identify and resolve factual disputes. *Compare* App.C. *with* App.D. Mr. Wells was thus deprived of notice as to which facts the trial court would resolve in its findings. The trial court resolved



every factual dispute it identified in the State's favor. It found trial counsels' affidavits credible even though Mr. Wells had no chance to rebut them. FFCL at 16. And for every allegation of deficient performance Mr. Wells made, the court credited trial counsel's unrebutted rationalizations. *See* App.D. at 15-16, 21-28, 65, 72, 78-79, 81-83, 88, 91, 98-99, 102, 110-12; *see also* App.B. (adopting the State's proposed findings). Counsel's affidavits *vehemently* dispute Mr. Wells's allegations.<sup>2</sup> Instead of accepting Mr. Wells's deficient performance allegations as true, the court relied on trial counsel's explanations and resolved each dispute in the State's favor. *See, e.g., id.* at 26.

To deny him relief, the trial court held Mr. Wells to a burden of proof, rather than a pleading burden. *See, e.g.,* App.D. at 19, 22, 23. Mr. Wells, however, was never given an opportunity to prove his claims because the trial court denied him any opportunity to present evidence that would have proved those claims. Since both the State and the trial court deemed it necessary to rely on facts beyond what Mr. Wells pleaded to defeat his claim, *see generally* App.D., by definition, the allegations required resolution. And Mr. Wells was therefore entitled to be heard.

Mr. Wells objected to the State's proposed findings, which relied on non-evidence, as well as the trial court's adoption of the State's findings. Ultimately, the Court of Criminal Appeals accepted the trial court's findings and held that Mr. Wells failed to meet his burden of proof—an impossible task when he was deprived of the opportunity to submit evidence. Where the state provides a statutory procedure that

---

<sup>2</sup> Specifically, counsel denied Mr. Wells's allegation that the sentencing presentation was based on Mr. Wells being hardwired to be incurably dangerous based on unreliable genetic pseudo-science.

enables a post-trial applicant to raise the unconstitutionality of his confinement, the state must apply those rules fairly. *Cf. Evitts v. Lucey*, 469 U.S. 387, 401 (1985). In this case, the state not only applied the rules unfairly but disregarded them entirely to uphold Mr. Wells's unconstitutional conviction and sentence. The mere illusion of process is not *due* process.

### III. CONCLUSION

Because Mr. Wells's post-conviction constitutional challenge to his conviction and death sentence was rejected without notice of the facts the court would resolve and without any opportunity to be heard by submitting evidence, Mr. Wells was deprived of due process. He respectfully asks this Court to grant his petition for writ of certiorari.

Respectfully submitted,

OFFICE OF CAPITAL & FORENSIC WRITS

/s/ Ashley Steele

Ashley Steele, Counsel of Record

ashley.steele@ocfw.texas.gov

Michelle Ward

Benjamin B. Wolff

1700 North Congress Avenue, Suite 460

Austin, Texas 78701

(512) 463-8600

*Counsel for Petitioner,*

*Amos Wells*