

MAY 05 2022

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No. _____
21-7862

IN THE
SUPREME COURT OF THE UNITED STATES

Mark Dwayne Halley — PETITIONER
(Your Name)

vs.
Bobby Lumpkin - Director of TDCJ-CID — 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)

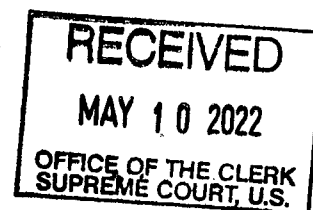
PETITION FOR WRIT OF CERTIORARI

Mark Dwayne Halley
(Your Name)

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Diboll, TEXAS 75941
(City, State, Zip Code)

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ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~December 27, 2021~~ December 27, 2021

☐ 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: February 11th, 2022, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) The Fourteenth Amendment of the United States Constitution provides: "No person shall be... deprived of life, liberty, or property without due process of law."
- 2.) The Sixth Amendment of the United States Constitution provides:
"In all criminal prosecutions, the accused shall enjoy the right to... have effective assistance of counsel for his defense"

STATEMENT OF THE CASE

- On September 14th, 2016, a warrant was issued on the petitioner for aggravated assault with deadly weapon which the petitioner turned himself into Authorities and arraigned with a "\$50,000" bond under cause no. A 20335-1612.
- On December 15th, 2016, Counsel filed a motion for bond reduction which was the 93rd day being detained without indictment.
- On December 29th, 2016, An indictment was issued and "\$20,000" bond set by the 6th District Court. (SEE Exhibit I - Indictment)
- On January 10th, 2017, a bond hearing was held and the 6th Dist. Ct. authorized art. 17.15(B) factor to deny the relief requested after art. 17.151 had been involved.
- On July 13th, 2017, the petitioner waived the pre-trial hearing and involuntarily accepted the 8 years plead guilty to agg. assault w/ dw
- On March 20th, 2018, the petitioner filed a writ application under Art. 11.07 and was denied June 13th, 2018. (SEE Appendix C - highlighted on page 2)
- On July 25th, 2018, the petitioner filed § 2254 timely
- On October 22, 2018, the petitioner timely filed "Petitioner Reply" with attachments. (SEE Exhibit J)
- On August 17th, 2021, the district court denied the petitioners § 2254. (SEE Appendix C)
- On October 11th, 2021 the petitioner filed motion for issuance of COA to Fifth Circuit and was denied Dec. 21st, 2021. (SEE Appendix B)
- On Jan 10th 2022, petitioner filed for rehearing en banc to Fifth Circuit and was denied on February 11th, 2022. (SEE Appendix A)

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APPENDIX B	Motion for issuance of COA Denied by the Fifth Circuit
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QUESTION(S) PRESENTED

- 1.) Does the aggravated assault with deadly weapon conviction moot the petitioner's § 2254 motion seeking redress of a "Live" cause of action under § 1983 for an inadequate state procedure ~~and~~^{when} the petition does not attack the element of the indictment to "necessarily imply to invalidate" the conviction?

Reason For Granting the Petition

RULE 10

C. THE Fifth Circuit, TEXAS Court of Criminal Appeals has decided an important federal question in a way that conflicts with a relevant decisions of this court.

Sup. Ct. R 10 is concern with review of the United States of Appeal, and state courts of last resort based on a direct conflict of a decision of the Supreme Court.

Appeal § 708, ¹⁶⁵⁸ On Certiorari, the United States Supreme Court reversed the judgment of the Tennessee Court of Appeals, In an opinion by Brennan, J., expressing the unanimous views of the Court, it was held that (1) the question of mootness was a federal question as to which the Court was not bound by the state appellate courts holding; (2) the controversy was not rendered moot, insofar as review by the U.S. Supreme Court was concerned; (3) the issuance of the ^{Injustice} ~~injustice~~ was beyond the power of the Tennessee courts. SEE Liner v. Jafco 84 S.Ct. 391 (1963)

1.) The Fifth Circuit denial of the petitioners' § 2254 motion for COA ^{And Rehearing En Banc} with asserted claims (1) and (2) redressed as § 1983 claims exhibited in Appendix B affirming the TCCA decision to deny the petitioner the relief of art. 17.15 provision resulting from Counsel's ineffective assistance during bond hearing without determining the merits under the STICKLAND standard on procedural grounds as "moot" after the aggravated assault with deadly weapon conviction Applying Martinez, involving an unreasonable application that is in direct conflict with this Court's decision in Powell, Knox, Heck, and is cognizable in a § 1983 cause of action, in light of this Court's precedents in Parrat, Stachura, Logan, Davidson. This court should answer this important federal question over the lower courts and issue the Writ.

(16)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Espana v. United States</u> , 616 F.2d 41, 43 (2nd Cir 1980)	18
<u>Ex parte Gill</u> , 413 S.W.3d 425 (Tex. Crim. App. 2013)	12
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<u>United States v. Guerrero</u> 546 F.3d at 331 (5th Cir. 2008)	19, 20
STATUTES AND RULES	
TEX. Code Crim. Proc. art. 17.151 / § 2 (1-4) procedural safeguards	
TEX. Code Crim. Proc. art. 17.15 (B) 6 factor (prior criminal history)	
TEX. Code Crim. Proc. art. 17.40(a)	
TEX. Code Crim. Proc. art. 11.05	

OTHER Exhibit A2 Page 1, 6, 7 / Exhibit E: Bond hearing transcripts /
Exhibit G: Petitioner Reply / Exhibit I: Indictment / Exhibit J: Docket sheet
Exhibit K: Dismissal 5:18-CV-101 / Exhibit P: 11.07 writ application / Exhibit Z:
demonstration of art. 17.151 under Const. Law § 525(a)

LIST OF PARTIES

[] 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:

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RELATED CASES

Memphis Light, Gas, & Water v. Craft, 98 S.Ct. 1554 (1978)

Respondent's claim for actual and punitive damages arising from MLG & W Termination of service saves this cause from the bar of mootness. cf. Powell v. McCormack, 395 U.S. 486, 496-500 (1969)

Parents involved in Cmty. Sch. v. Seattle Sch. Dist. 1, 127 S.Ct. 2738 (2007) (Holding case live due in part to damages claim in complaint, reversing judgments against petitioners, and remanding for further proceedings.

SEE Parker, 2020 WL 5127778, at *4 (citing Yohey v. Collins, 985 F.2d 222, 228-29 5th Cir. 1993) "Petitioner's complaint that being subjected to excessive pre-trial bail was rendered moot by his conviction."

Under 28 U.S.C.S. § 2254(d)(1)

Accordingly, section 2254(d) applies only to issues that has been adjudicated on the merits in state court. Green v. Johnson, 116 F.3d 1115, 1121 (5th Cir. 1997). We must determine whether claims were adjudicated on the merits by considering these factors: (1) what state court has done in similar cases; (2) whether the history of the case suggest that the state court was aware of any ground for not adjudicating the case on the merits. And (3) whether the state court's opinion suggest reliance upon procedural grounds rather than determination of the merits.

The petitioner asserts that under factor (1) the TCCA denied his 11.07 writ Application without a written order complaint of being erroneously denied art. 17.151 relief after the aggravated assault w/dw conviction as "moot" as done in similar cases applying Martinez v. State 826 S.W. 2d 620 (Tex. Crim. App. 1992) (pre-trial confinement habeas claim is moot after conviction), (2) TCCA was aware in the petitioner 11.07 claims ^{(10) (Exhibit P)} in writ Application were it was not addressed as a failure of counsel abandoning the interlocutory appeal process concerning the trial court erroneous judgment as a procedural default external to the petitioner while represented by counsel not entitled to hybrid representation. SEE Ex parte Bohannon, 350 S.W. 3d 116 (Tex. Crim. App. 2011) (stating because habeas applicant was represented by counsel and not entitled to hybrid representation, court would disregard and take no action on "numerous submissions he filed pro se") and (3) which should have been challenged prior to the agg. assault conviction immediately to TCCA. SEE Ex parte Smith 178 S.W. 3d 797 (Tex. Crim. App. 2005) (The denial of relief on pretrial writ of habeas corpus may be appealed immediately); see also Watson v. State 96 S.W. 3d at 500 (Tex. Crim. App. 2005) (stating habeas jurisdiction in criminal proceeding rest with the T.CCA, district courts, and county courts). Therefore the

petitioner avers the state court's opinion was reliance upon procedural grounds rather than determining of the merits of his IAC claim under the Strickland standards.

In Appendix C page 7, the district court added, "the petitioners complaint that being subjected to excessive pretrial bail was rendered moot by his conviction", SEE Parker, 2020 WL 512 7778, at *4 (citing Yohey v. Collins, 985 F.2d 222, 228-29 (5th Cir. 1993))

The petitioner contends that although the TCCA and district court applying Fifth Circuit precedence reliance upon procedural grounds to the petitioner's motion as seeking habeas relief from art. 17.151 provision may have been correct under state and federal law^{as moot}, it involved an unreasonable application to his IAC claim without determining the merits under the Strickland standard as moot that is in direct conflict of a "clearly established Federal law as determined by the Supreme Court of the United States" against which measures the lower courts application on the petitioner seeking relief from being erroneously denied art. 17.151 provision as a result of counsel deficient performance during bond hearing under §1983 for damages after the aggravated assault w/dw conviction is found in Powell v. McCormack, 395 U.S. 486, 89 S.Ct. 1974, 23 L.Ed.2d 491 (1969).

The Supreme Court held that "where one of the several issues presented become moot, the remaining 'LIVE' issue supply the constitutional requirements of a case or controversy." Id at 497 "a case is not moot so long as any claim of relief is viable, whether the claim was primary or secondary originally sought." Therefore, §2254(d) does not bar federal habeas review of the petitioner's motion redressed under §1983 for damages, for relief under the Strickland standard, consideration for mootness.

As exhibited on page 8 (highlighted) in the timely filed "Petitioner Reply" Exhibit G, the petitioner claim to have been erroneously deprived of earning economically as a licenced C.D.L. driver (owner operator) from art. 17.151 provision as a loss within the time capacity of Jan. 10th, 2017 to July 13th, 2017 for the wrong procedures used as a result of counsel deficient

performance (highlighted) on page 6, which was redressed as §1983 claims for compensatory and punitive damages in the motion for issuance of COA as asserted in Appendix B as claim (1) and (2) denied. The petitioner asserted these claims in his Brief to Motion for Rehearing which was also denied. see Appendix A.

1.) Due process rights were violated by trial court's denial of his motion for a reduced bond amount

In 2013, TCCA issued its opinion in Ex parte Gill, 413 S.W. 3d 425 as a controlling precedent addressing the consideration of art. 17.15's factors jointly subservient in an art. 17.151 hearing

The petitioner will show that its undisputed under the controlling precedent that the trial court authorized an inadequate state procedure from facts within the bond hearing transcripts that was presented in the original 11.07 writ application as (Exhibit E).

On page 12 Line 3-11, the petitioner invoked art. 17.151 provision pointing out being detained over 100 days without indictment. Gill supra at 431. (From the record its review shows from Appellants joint art. 17.151 hearing. We find appellant properly invoked art. 17.151 because they established that they were in custody for over ninety days and the State was not ready to try them on the offense for which they were being held.)

On page 15 Line 5-12, the petitioner requested the "\$20,000" bond be reduced to "10,000" or P.R. bond after art. 17.151 had been invoked which was mandatory for the trial court to follow. Gill supra at 429 (In Bowe, We held "that where it was undisputed that the State was not ready for trial ninety days after an accused's arrest, a judge had only two choices under art. 17.151: either release the accused upon personal bond or reduce the bond amount. If the court choose to reduce amount of bail required it must reduce bail to an amount that the record reflect an accused can make to effectuate release.")

On page 18 Line 19-23 A.D.A presented prior convictions (failure to I.D.) and on page 19 Line 23-24 (evading detention w/ vehicle) after art. 17.151 had been invoked as factors from art. 17.15 (B)6, to establish the petitioner

a flight risk. Gill supra, at 430 (We held that Legislature intended art. 17.151 to operate in conjunction with, not sub servient to, art. 17.15's rules as long as the judges decision-making process result in the accused release.")

On page 22 Line 2-3, the trial court pointed out the two prior convictions for running from law enforcement without the A.D.A. pointing out that they were committed while out on bail or not appearing to trial, when in fact the petitioner had pointed out on page 21 Line 9-10 that he had turned him self into authorities which should have ~~been~~ been considered as a factor in reducing the \$20,000 bond as determined in Montalvo, 315 S.W. 3d at 595 (Tex. Crim. App. 1989)

On page 23 Line 1-2 the trial court increased the \$20,000 bond to \$40,000 outside the petitioner means to ensure the petitioner remained restrained on an excessive bond for his appearance to trial without considering other means to achieve such goal. Gill supra at 431 (Nothing in the mandatory language of art. 17.151 precludes a judge from imposing a broad range of reasonable (and even creative) conditions of release designed to ensure the appearance to trial such as house arrest, electronic monitoring or daily reporting under art. 17.40)

In conclusion Gill supra at 433 ("We are troubled that a judge may order the indefinite detention of an uncharged accused of an offense that the State is not ready to bring to trial on the basis of his criminal history. It apparently troubled Legislature as well. Article 17.151 was the remedy. Id. at 430 (Conditioning release under art. 17.151 on matters such as prior criminal history, deprive the statute of any meaning apart from art. 17.15 and potentially frustrate art. 17.151 clear intent"). Id. at 433, (In failing to comply

with art. 17.151 and order appellant's release on personal bond or reducing appellant's bail to an amount they can make, the judge abused its discretion.

The petitioner asserts as determined in Ex parte Gill that the trial court (as a high-ranking policy-maker) considering art. 17.15 (B) 6 factor presented by A.O.A. (as a policy-maker) after art. 17.151 had been invoked and denied the relief requested from the provision committed a procedural error violating policy (state) constituting a procedural due process violation as determined in Parrat, 101 S.Ct. at 1912-13 (1981), establishing and authorizing an inadequate state procedure depriving the petitioner of his liberty interest right to bail from art. 17.151 provision that protected under Constitutional Law § 525(2) (SEE Exhibit ² ~~P~~), and doing so, subjected the petitioner to a due process violation under the 14th Amendment as determined in Logan, 102 S.Ct. at 448 (1982). State officials liability is not negated by showing that they did not intend to deprive the petitioner of due process of art. 17.151 provision under the Due process clause and therefore not entitled to qualified immunity as determined in Daniels 106 S.Ct. 662 (1986); and the petitioner seeking recovery of damages under § 1983 for infringing on his liberty interest by establishing and authorizing an unconstitutional state procedure as determined in Davidson 752 F.2d 817, ^{Daniels} 106 S.Ct. 668 (1986).

Reasonable jurist could agree as determined in Ex parte Gill, the State policy makers was in a position to provide for a pre-deprivation process of art. 17.151 provision, and conclude the State policy-makers are liable under § 1983 held effective to have made policy or condoned creation of a custom by ratifying the unconstitutional actions as determined in Praprotnik, 108 S.Ct. 915 (1988); Miller-El 537, U.S. 322 (2003).

Therefore, otherwise the petitioner's § 1983 claim presents an issue that adequate to deserve encouragement to proceed further ~~on~~ on remand.

2. Received Ineffective Assistance of Counsel at bond hearing

The claims of ineffective assistance of counsel in criminal cases are evaluated under a two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 681-88, 694, 104 S.Ct. 2052, 2064-74, 80 L. Ed. 2d 674 (1984), see Wiggins v. Smith, 539 U.S. 510, 521-22 (2003); Ex parte Briggs, 187 S.W.3d 458, 469 (Tex. Crim. App. 2005); Ex parte Duffy, 607 S.W.2d 501, 514 n. 14 (Tex. Crim. App. 1980) (To provide constitutionally effective representation, trial counsel has an obligation to make a reasonable investigation into the applicable laws in every case. This is because counsel's ultimate responsibility is to advance all viable defenses.)

The petitioner asserts that the TECA denied his 11:07 writ application without a written order adjudicating on the merits on procedural grounds and not on the basis of determining the merits of his IAC claims under the Strickland / Wiggins standard which the petitioner will show below:

First Prong - Deficient Performance

The ~~petitioner~~ ^{petitioner} asserts counsel failed in his duty to render reasonable effective assistance after being made aware of the petitioner's objective to obtain entitled relief from art. 17.151 provision requested on Dec. 12th, 2016, via phone, he file a motion for bond reduction for the State failure to indict from Sept. 14th, 2016 under § 1, (1) of art. 17.151 for relief of the "50,000" bond. After acknowledging the entitlement under § 1, (1) for relief and agreeing to file motion, had to have noticed § 2, (1-4) procedural safeguards below attached as the only applicable exceptions sufficiently provided legislatively to deny art. 17.151 relief and failed to investigate thoroughly to ensure that the ~~petitioner~~ ^{petitioner} had not triggered any of those exceptions prior to filing the motion for bond reduction on Dec. 15th, 2016 to render reasonable assistance in order to demonstrate the petitioner had not triggered any

of the only exceptions that can be applied under § 2, (1-4) safeguards to prevent the relief of art. 17.151 provision opposed to the \$50,000 bond as a viable defense in admissible form against the State once a hearing would be set on such motion. Furthermore, counsel failed to investigate to know clearly established controlling precedent issued by TCCA, Ex parte Gill, addressing art. 17.15's factor jointly in an art. 17.151 hearing prior to the bond hearing on Jan. 10th, 2017, which was applicable time (30 Days) from filing motion by request on Dec. 12th, 2016 pursuant to art. 1.051 (e) (Appointed counsel is entitled 10 days to prepare for a proceeding) to get familiar with how § 2, (1-4) safeguards, art. 17.15 factors and art. 17.151 provision applied to effectuate the release on reduced or P.R bond under controlling precedent Ex parte Gill. There is nothing strategic in not litigating under the authority of controlling precedents on issues that being presented in order to engage the State officials into a non-discretionary functioning to perform by placing them within their administrative capacity as policy (State) to operate using only § 2, (1-4) safeguards attachments to prevent entitled relief after the invocation of art. 17.151 provision after discovering the ~~petitioner~~ ^{petitioner} had not triggered any of those sufficient exceptions to be applied prior to bond hearing. This would have been reasonable and advanced a viable defense against a breach of duty by placing a limit on the State officials' discretion to use insufficient exceptions improperly in an administrative functioning process.

During the actual bond hearing, when it had been pointed out that the petitioner had already been detained 107 days without indictment which invoked art. 17.151 on page 12 line 3-10 of bond hearing

transcripts (Exhibit E) and the A.D.A. presenting the prior convictions on pages 18 Line 19-23 / page 19 Line 23-24. After the invocation and demon stated that "art. 17.151 had already been invoked when it was pointed out the petitioner has already been detained 107 days without indictment prior to the state's introduction of the prior convictions which are factors under art. 17.15 (B) ~~is~~ inapplicable to ~~the state's invocation~~ be considered after the invocation. Furthermore, the only exceptions sufficiently provided by legislation are § 2, (1-4) procedural safeguards for the State to apply which the petitioner is not currently serving time for a previous offense as a felony or misdemeanor to trigger § 2, (1); Nor has the State presented another count which ~~time~~ ^{time} has not elapsed after arraignment to trigger § 2, (2); there is no strategic defense for the use of a psychiatric evaluation hearing to trigger § 2, (3); and the petitioner has not infringed on any imposed conditions while in custody that was implemented on Sept 16th, 2016 attached to the \$50,000 bond that would trigger § 2, (4) which the alleged victim confirmed that the petitioner had not contacted her at anytime when asked she replied "No" on page 9 Line 16-20". This demonstration should have been done prior to the trial court asking the petitioner "You've got two convictions for running from law enforcement" on page 22 Line 2-6. see Wiggins supra at 522 (Failure to investigate is a violation of Strickland Performance prong).
Second Prong Prejudiced

Counsel failure to render reasonable effective assistance by not including that § 2, (1-4) safeguards that were untriggered by the petitioner are procedurally provided legislatively as the only sufficient exceptions
(17)

the State can apply to deny the relief request from art. 17.151 provision after it had been clearly invoked to be considered as a factor into the trial court ruling which could have probably change the possibility of the petitioner being granted the relief request with the proper procedures being followed, instead of the petitioner being prejudiced with art. 17.15 (B)(6) (prior criminal history) as the only factor to considered, or any on the matter to be considered jointly as factors, for the trial court to be subserviant too in his final judgement ruling that resulted to the outcome of being denied entitled relief from art. 17.151 erroneously due to art. 17.15's factors are in-applicable to do so after art. 17.151 has been invoked, therefore depriving the petitioner of his 6th Amendment right to reasonable effective assistance of counsel.

Actual and Substantial Disadvantage

Actual
Counsel's I A placed an actual disadvantage to the petitioner earning economically as a licensed CDL (owner operator) from art. 17.151 provision from Jan. 10th, 2017 to July 13th, 2017 as a loss within that time capacity for which the petitioner complained about in the timely filed "Petitioner Reply" Although the petitioner was unemployed ~~at the~~ ^{within the} time capacity and is therefore entitled to compensatory damages ~~under~~ ^{under} \$1983 as determine in Espana v. United States 666 F.2d 41, 43 n. 2 (2nd Cir. 1980). (Loss of time is a more expansive concept than lost wages. It compensates a plaintiff for his loss capacity to earn and may be sought even by a plaintiff ~~who was unemployed at the time of the injury.~~ ^{who was unemployed at the time of the injury.})

Substantial

Counsel's I/A placed an substantial disadvantage to the petitioner from his private interest right to secure counsel David Guerin of his choice financially after consultation after being erroneously denied art. 17.151 provision for which the petitioner complained about to re-appointed counsel Troy Bollinger "many times that you wanted to hire the lawyer of your picking" pointed out in attorney-client privilege document Exhibit A2 page 6 and "wanting to go to trial" Exhibit A2 page 7 which were presented in the timely filed "Petitioner Reply" as a newly asserted structural error claim "relating back" to facts set forth from the bonding hearing in the original I/A claim as determined in Tiller, 65 S.Ct. 421 ~~1978~~ (1978), there fore, the guilty plea was not made voluntarily or intelligent as determined in Guerrero, 546 F.3d at 331 (5th Cir. 2008). (Relying on Gonzalez-Lopez, the Fifth and Seventh Circuits have held "that a deprivation of counsel survives a guilty plea." If a defendant is erroneously denied the counsel of choice, it is a structural error in the trial that brings into question the voluntarily and intelligent character of the guilty plea itself." SEE Tollet v. Henderson, 411 U.S. 258, 267, 93 S.Ct 1602, 36 L.Ed. 2d 235 (1973) But it is not subject to harmless-error analysis, as that "would be a speculative inquiry into what might have occurred in an alternate universe." Gonzalez-Lopez, 548 U.S. at 150, 126 S.Ct. 2557. As such, even in cases where a defendant has pled guilty, we must consider the district court erroneously denied a defendant the right to his counsel of choice, and waiver will not apply.)

The petitioner asserts that the displacement of art. 17.15(B) (prior conviction history) factor as the on factor to be considered without the untriggered procedural safeguards of § 2, (1-4) to be comported upon by the trial court after art. 17.151 had been invoked and relief requested from its provision by the petitioner was the result of counsel's deficient performance as a state policy-maker violating the petitioners due process of art. 17.151 provision, thus, establishing a state process condoned by a de jure system that deprived the petitioner of his protected liberty interest right to bail and subjected him to a due process violation under the 14th Amendment of the U.S. Constitution, as determine in Samples, 885 F.2d at 1116 (3rd Cir. 1989).

The state policy-maker is not entitled to qualified immunity and held liable without a showing that counsel did not intend to deprive the petitioner of due process, an intent that the process not result in a deprivation of art. 17.151 protected interest will suffice as determine in Daniels, 106 S.Ct. 662 (1986)

Reasonable jurist would agree that counsel not comporting^{to} the de jure system of § 2, (1-4) procedural safeguards legislatively provided to the trial court were untriggered by the petitioner to be considered after art. 17.151 had been invoked and relief requested from its provision by the petitioner constitutes a breach of duty that deprived the petitioner of the protected liberty interest of art. 17.151 entitling the petitioner a cause of action under § 1983 for compensatory damages (aside of punitive as well) for such injury as determine in Stachura, 106 S.Ct. at 2542 (1986), and conclude the newly asserted structural error entailing from counsel's breach of duty relates back to the original I A claim and under § 2254 forum set aside or vacate the guilty plea as involuntary; unintelligently made on the basis as determined in Guerrero holding on Gonzalez-Lopez, 126 S.Ct. 2557 - Miller-EL 531 U.S. 322 (2003)

Therefore, the petitioner's § 1983 claim for damages and set-aside/vacate the guilty plea under the § 2254 forum presents issues that are adequate to deserve encouragement to proceed further on remand.

The petitioner asserts in the timely filed "Petitioner Reply" as (Exhibit G), these claims of being "erroneously deprived of earning economically as a CDL owner operator from art. 17.151 provision" highlighted on page 8 as a loss within the time capacity of Jan. 10th, 2017 to July 13th, 2017 for the wrong procedures used as a result of counsel deficient performance highlighted on page 6 attempting to redress the § 2254 to a § 1983 cause of action for damages traceable to counsel which was not address by the district court prior to denial of the § 2254 motion, which should invoke jurisdiction under Art. III, § 2 of the Constitution. See Knox v. SEIU, 567 U.S. at 307-08, 132 S.Ct. at 2277, 183 L.Ed.2d at 295 (2012) (Article III § 2 of the Constitution invokes jurisdiction on a federal court, to litigant that has suffered an actual injury traceable to a defendant and likely to be redressed by a favorable decision. But in order to do so, a case must really be dead.)

The petitioner asserts the § 1983 claims seeking damages should prevail because (1) the bond hearing does not address or attack and element of the indictment, nor does the § 2254 to "necessarily imply the invalidity" of the agg. assault w/dw conviction, only for the wrong procedures used. See Spencer v. Kemna, 118 S.Ct. 978 (1998) (It is not certain in any event, that a § 1983 damages claim would be foreclosed. If, for example, petitioner were to seek damages "for using the wrong procedures, not just for reaching the wrong result." See Heck, 512 U.S. at 482-483, and if the procedural defect did not "necessarily imply the invalidity of "the revocation, see id at 487, the Heck would have no application at all. See Edwards v. Balisok, 137 L.Ed.2d 906, 117 S.Ct. 1584, 1997 U.S. LEXIS 3075 (1997) (Ginsburg, J. concurring);

2.) The §1983 claims has not been litigated in a state court proceeding or precluded by the guilty plea to have a preclusive effect under the collateral estoppel doctrine. SEE Haring v. Prosise 462 U.S. 306 (1993) (The Supreme Court held that the individual's conviction in state court did not preclude him from seeking a recovery under §1983 for an alleged Fourth Amendment violation that was never considered in the state proceeding (emphasis added) Collateral estoppel does not apply.) 3.) Although the petitioner alleged A.D.A. Danah Zirpoli in a previous §1983 cause of action seeking damages under ~~Civil~~ No. 5:18-CV-101 BQ, United States Magistrate Judge D. Gordon Bryant Jr. on page 5 (highlighted) in (exhibit K) "Similarly, Halley does not claim, and has alleged no facts to suggest, that any of these three defendant implemented an unconstitutional policy that resulted in a prolonged detention." and therefore res judicata does not apply to the redressed §1983 claims. SEE New Hampshire, 121 S.Ct. 1808 (2001) (res judicata prohibits "successive litigation claims"); and 4.) Rooker-Feldman doctrine does not apply to a federal action, as the controversy or case remained live not mooted by the facts of state's highest court. Appeal §1158, Exxon, 125 S.Ct. at 1526 (2005).

Reasonable jurist would debate whether a "LIVE" case exist in the petitioner's 2254 motion redressed IA claim seeking the recovery of damages under §1983 from counsel as a state policy-maker while acting under color of state law established an inadequate state procedure that deprived the petitioner of ant. 17.151 protected liberty interest is mooted by the agg. assault w/dw conviction as determined in Powell, 89 S.Ct. 1974 (1969), and conclude §2254(d) does not bar federal habeas review of his 2254 petition redressed as a §1983 claim for primary and secondary relief sought. Therefore, otherwise the petitioner's §1983 claim 1.) and 2.) assert claims in Appendix B presents an issue that's adequate to deserve encouragement to proceed further on remand to consideration of mootness. Miller-El 537 U.S. 322 (2003)

The Constitution permits the Court to decide legal questions only in the context of actual "cases" or "controversy."

Art. III, §2 and an actual controversy must exist at all stages of review, not just when the complaint is filed. Preiser v. Newkirk, 422 U.S. 395, 401, 95 S.Ct. 2330, 45 L.Ed. 2d 272.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark Lawrence Hailcy

Date: May 3rd 2022