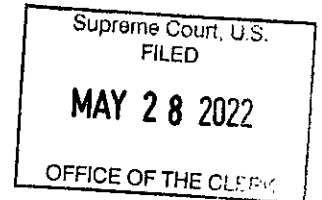


No. 21-8039

IN THE
SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543



GEORGE MUÑOZ JR — PETITIONER
(Your Name)

vs.
US Court of Appeals for the Fifth Circuit RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

GEORGE MUÑOZ JR
(Your Name)

1697 Fm 980
(Address)

Huntsville TX 77343
(City, State, Zip Code)

(210) 219-8910
(Phone Number)

Questions Presented

- ① The court of Appeals erred by ruling that A Trial Judge is not required to give a requested Instruction on the lesser offense of criminal negligent Homicide when An Indictment Alleged murder rather than Felony murder.
- ② The court of Appeals erred in ruling that the mental state definitions were properly limited to the nature of the conduct.
- ③ A Trial Judge erred by not granting A mistrial when A Juror came forward three days into Appellants Trial stating she committed perjury under oath by working with the District Attorneys wife at Methodist Hospital.
- ④ Attorneys At the time of trial were ineffective for the fact not presenting no witnesses on the Appellants behalf that could of gave A Jury A different verdict. Failure to interview witnesses or discover readily available evidence is An error in trial preparation, not trial strategy.

List of Parties

State Trial Judge:

The Honorable Sid Harle 226th Judicial District Court,
Bexar County, Texas.

Counsel for the state of TEXAS At Trial And on State Appeal:

Enrico Valdez 101 West Nueva San Antonio TX 78205

Todd Keasle 101 West Nueva San Antonio TX 78205

Joshua Somers 101 West Nueva San Antonio TX 78205

Counsel for the state of TEXAS on this Appeal

Casey Leish Jackson Solomon Assistant Attorney General Austin Texas

The Honorable Orlando Garcia, United States District Court for the
Western District of Texas, San Antonio Division.

related cases

Cook v State 884 S.W. 2d 485 (Tex Crim App 1994)

Almanza v State 686 S.W. 2d 157 (Tex Cr. App 1984)

Arpne v State 721 S.W. 2d 348 (Tex Cr. App 1986)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

Table of Authorities Cited

Alvarado v. State 704 S.W. 2d 36 (Tex. Crim App 1985)

Banks v. State 721 S.W. 2d 348 (Tex Crim App 1986)

Bignall v. State 887 S.W. 2d 21 (Tex Crim App 1994)

Cooper v. State 842 S.W. 2d 414 (Tex App Beaumont 1992)

Fisher v. State 887 S.W. 2d 49 (Tex App 1994)

Munoz v. State 533 S.W. 3d 448 (Tex App San Antonio 2017)

Schroeder v. State 123 S.W. 3d 398 (Tex Crim App 2003)

Sneed v. State 803 S.W. 2d 833 (Tex App Dallas 1991)

Strickland v. Washington 446 U.S. 668, 104 Ct.

Powell v. Alabama 287 U.S. 45 53 S Ct 55 77 L Ed 158 (1932)

Statutes

Tex. Code Crim Proc Art 37.09

TEX Penal Code Section 6.02

TEX Penal Code Section 6.03

TEX Penal Code Section 19.05

TEX R. App 68

U.S. Const. Amend VI

U.S. Const Amend V ↗

U.S. Const Amend XIV

* Notes switch the two around put V first then VI

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 _____ 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 _____ 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 A 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 _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was FEBRUARY 28, 2022.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: FEBRUARY 28, 2022, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

28 U.S.C. § 1651 which states

(A) The Supreme court And all courts established by Act of Congress may issue All writs necessary or Appropriate in Aid of these respective Jurisdictions And Agreeable to the Use And Principles of law.

(B) An Alternative writ or rule nisi may be issued by A Justice or Judge of A court which has Jurisdiction.

28 U.S.C. § 2255 which states:

(B) Unless the motion And the files And records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, Grant A prompt hearing thereon, Determine the issues And make findings of the fact And conclusion of law with respect thereto. If the court finds that the Judgement was rendered without Jurisdiction, or that the sentence Imposed was not Authorized by law or otherwise open to collateral Attack, or that there has been such A Denial or Infringement of the Constitutional rights of the prisoner as to render the Judgement vulnerable to collateral Attack, the court shall Discharge the prisoner or resentence him or Grant A new Trial or correct sentence As may Appear Appropriate.

Statement of Case.

On June 16, 2013 Appellant was indicted in Cause number 2015 -CR-5575 with murder occurring on the Above Date.

The Jury Trial began with Jury selection on June 29, 2015 before Honorable Judge Sid Harle. On July 6, 2015 the Jury found the Applicant Guilty, contrary to his plea. on July 30, 2015 the Judge sentenced the Applicant to Life in The Texas Department of Criminal Justice Institutional Division And No fine.

A motion for New Trial was timely filed on August 20, 2015 And was Denied by operation of law. (ROA 1189-1190) Notice of Appeal was timely filed on July 31, 2015 (ROA 1170) The fourth court of Appeals in A published opinion Affirmed the Judgement And Sentence. Muñoz v State, 533 SW. 3d 448 (Tex App - San Antonio 2017, pet rel). The petition for Discretionary review was refused. In re Muñoz No. PD. 0280-17 (Tex. Crim. App. July 26, 2017) A state writ was filed, A Hearing was not held And the TCA denied relief. Ex Parte Muñoz No WR-90,171-01 (Tex Crim. App. August 21, 2019. A federal writ was filed And the District court Denied relief And Denied A certificate of Appealability. (COA) (ROA 92-102) notice of Appeal was timely filed. (ROA 104-105)

Statement of Facts

A.

On June 16, 2013 At Approx. 5:00 P.M. At An Intersection of Culebra : 36st. Appellant was driving his Toyota car down Culebra road where A Dairy Queen near the Intersection had A camera that recorded on DVD what happened At this intersection. This DVD was Admitted into evidence As state Exhibit 2. The officer claimed that the Applicant exited the Toyota holding A Gun however the DVD Does not show

The Applicant Exit the Toyota the DVD shows the Driver of A Dodge Charger Steven VARGAS exit the Dodge And Attack the Applicant while the Applicant was in his Toyota fleeing from Steven VARGAS. As the Applicant tries to Avoid the Attacker Steven VARGAS the officer claimed that the Applicant hit A patrol car while VARGAS was still attacking the Applicant.

However the DVD does not show the Applicant hit the patrol car the DVD shows the Applicant reverse And Drive Around the officers car while Steven VARGAS was still on the attack.

The officer claimed that Applicant was fleeing from the SAPD instead of Steven VARGAS however the DVD shows the Applicant fleeing from Steven VARGAS before Any officer or SAPD was on the scene. The DVD shows A VAN in front of the Applicants car that never shows A Officer on the scene At the time And moment that Steven VARGAS begins his attack. After the VAN turns then A SAPD is shown At An opposite Intersection but not on the same Road of where Steven VARGAS begins his attack.

The officer statement is perjury under the state law And his violation of Applicants constitutional rights. For the fact the officer claimed Applicant exited his Toyota And the DVD shows Different that was Admitted into Evidence As state Exhibit Z.

As well A motion for ~~new trial~~ mistrial was presented At the time of Trial in Applicants Favor for the fact A Juror came forward Three days into the Applicants Trial stating she didn't want to get into Any trouble for the fact, she worked with the District Attorneys wife At Methodist Hospital. who the District Attorney who was trialing Applicants Trial.

The Trial Judge erred by not granting A mistrial for the fact the Above questioned was asked to All Jurors before Jury selection "Any Juror who knows Anybody whatsoever that is related to the Defense or the Defense Attorneys or well As the State Attorneys please raise your hand you cannot be on the jury. The Juror didnt come forward or raise her hand before Jury selection. As well committing Perjury under Oath violating Applicants Constitutional Rights. During Trial.

Testimony that was not included by Defense ^{counsel} At trial.

MARIA GARCIA was the passenger of the Applicants CAR At the time of the incident. MARIA GARCIA provided An Affidavit And was Ready to be presented At Trial. The Defense counsel failed And lied to try to get hold of MARIA GARCIA for the fact MARIA GARCIA stated A Gun was found on the DAY of June 16, 2013 in Applicants car that belonged to Her MARIA GARCIA that she had for her protection when she would Go visit Applicant in Georgia. MARIA GARCIA Also stated that the Applicant George Munoz JR Didnt even know she had the Gun with her on the DAY of June 16, 2013 which this statement by MARIA GARCIA contrary to the SAPD statements As well As the District Attorneys story which violates the Applicants Constitutional Rights.

The Jury was not provided Any information why George would flee from Vargas. There is four family members who provided Affidavits on state writ Diana Vost, Maricella Nurd, Richard Alvarado, Juanita Alvarado stated that Vargas was A violent person and known to carry A Gun. This information was not presented At Trial As well with MARIA GARCIA Testimony which could of gave A Jury A Different verdict, And instead caused A life-sentence.

Testimony not included by Defense counsel during punishment
Dr. Joan Murphy has conducted a psychological evaluation of George and
provided an affidavit for the state writ. This psychological evaluation
was done after the trial which at the time of trial Applicant's
rights were violated due to ineffective counsel. The psychological
evaluation must be presented at time of trial (Cook v State, 884 S.W.2d 485)
Tex. Crim. App. 1994.
When a trial judge errors and failure to apply the specific facts
of the defendant's mental state to the charge "over the Appellate objection,
and in the face of a properly requested charge was reversible error.
Almanza v State, 686 S.W.2d 157 (Tex. Cr. App. 1984)
Arline v State 721 S.W.2d 348 (Tex. Cr. App. 1986)

Reasons for Granting the petition

The Appellant has made A substantial showing of the Denial of constitutional rights on the state Ground. Therefore A COA should issue for the stated Ground. Enter findings of fact And conclusions of law returnable to the Court of Appeals in Austin TX or to the state court of sentencing for the Applicants Conviction And sentence be VACATED And the Applicants case be remanded for A new Trial, or in the Alternative, A new sentencing hearing And grant such other relief As MAY be necessary And appropriate.

Respectfully submitted,
GEORGE MURDER

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

George Munoz J

Date: 5-13-2022