NO. 22-5070

ORIGINAL



IN THE SUPREME COURT OF THE UNITED STATES

MAY TERM, 2022

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| LANE WALKER WALDRON, | § | PETITIONER |
| VS. | § | |
| THE STATE OF TEXAS, | § | RESPONDENT |

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# PETITION FOR WRIT OF CERTIORARI

## TO THE TEXAS COURT OF CRIMINAL APPEALS

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BY:

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Pro Se

## QUESTIONS PRESENTED:

1. WHETHER THE COURT BELOW ERRED IN CONCLUDING PETITIONER WAS NOT DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL WHEN HIS TRIAL COUNSEL IN A SWORN AFFIDAVIT ATTACHED TO HIS STATE WRIT, ADMITTED THAT HE/SHE WAS INEFFECTIVE BY NOT PROPERLY REPRESENTING PETITIONER?

2. WHAT AMOUNT OF CREDIBILITY DOES A COURT OWE TO AN ATTORNEY WHO SELF-ADMITS THAT HE RENDERED INEFFECTIVE ASSISTANCE, WHEN REPRESENTING HIS OR HER CLIENT AT TRIAL?

3. WHETHER IN A WRIT PROCEEDING, A COURT SHOULD RESOLVE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IN FAVOR OF A PETITIONER, WHEN THE ATTORNEY ADMITS UNDER OATH, THAT HIS OR HER REPRESENTATION OF HIS CLIENT FELL BELOW AN OBJECTIVE STANDARD OF REASONABLE ASSISTANCE THAT WAS BOTH DEFICIENT AND PREJUDICIAL?

4. WHETHER A CONVICTION SHOULD BE SET-ASIDE, WHEN A TRIAL JUDGE MAKES PREJUDICIAL REMARKS, THAT SHOWS HIS BIAS AGAINST THE DEFENDANT, THEN DURING THE HABEAS CORPUS PROCEEDINGS, THE SAME JUDGE RECUSES HIMSELF, AFTER THE HABEAS ATTORNEY FILES A MOTION TO RECUSE, BASED ON THE SAME STATEMENTS HE MADE AT TRIAL?

## LIST OF PARTIES

The parties of this case are:

1. Lane Walker Waldron, Petitioner
2. The State of Texas, Respondent
3. District Attorney of Comal, County, Texas, for the State of Texas.

These representations are made so the Justices of this Court may immediately determine if they are disqualified or should recuse themselves.

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## INDEX OF AUTHORITIES:



**CODES:**

**TO THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES**

**COMES NOW LANE WALKER WALDRON,** Petitioner hereinafter, and files this his pro se Writ of Certiorari, and prays that this court issue a review of the judgment below:

## I. OPINION BELOW:

This is a petition for Writ of Certiorari to the Texas Court of Criminal Appeals on a Writ of Habeas Corpus of a Capital Murder case, in which the state waived the death penalty.

Petitioner filed his only State Writ of Habeas Corpus in Comal County, Texas. The Texas Court of Criminal Appeals denied without written order the application for writ of habeas corpus on March 23, 2022. A copy of the postcard denial is attached as **Appendix-A.** Previously, Petitioner's petition for discretionary review was denied by the Texas Court of Criminal Appeals on September 12, 2018. A copy of the opinion is attached as **Appendix-B.** Petitioner's appeal was denied by the Texas 3rd Court of Appeals on February 1, 2018. A copy of the opinion is attached as **Appendix-C.**

## II. JURISDICTION:

This is a Petition for Writ of Certiorari to review a final judgment of the highest court in a State in which a decision could be had as the Texas Court of Criminal Appeals is the highest court in Texas for criminal matters. This court has jurisdiction pursuant to **28 U.S.C. § 1257(a).** This Petition for Writ of Certiorari is due on June 21, 2022, the 90th day after the State Writ of Habeas Corpus was denied.

## III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

**A. The Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**B. The Fourteenth Amendment, Section I**

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due course of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## IV. STATEMENT OF THE CASE:

This is a capital murder case from Comal County, Texas. The State of Texas did not seek the death penalty. Petitioner was charged and convicted for capital murder on January 12, 2017. Punishment was assessed by the trial court at life imprisonment without the possibility of parole in the Texas Department of Criminal Justice. Petitioner now presents this, his Writ of Certiorari, and the issues herein have never been addressed by this court.

In further brief description, trial counsel admitted in his sworn affidavit to the trial court in regards to Petitioner's 11.07 State Writ of Habeas Corpus, that he did indeed provide ineffective assistance of counsel at his trial. Nonetheless, the Texas Court of Criminal Appeals ignored this fact, and agreed with the trial court over counsel's admissions that he did provide ineffective assistance of counsel at trial.

The result of counsel's performance, and the biased trial judge was a life sentence without the possibility of parole for Petitioner.

## V. REASONS FOR GRANTING THE PETITION:

**I. [Question One] Whether the Court below erred in concluding Petitioner was not denied his sixth amendment right to effective assistance of counsel at trial when his trial counsel in a sworn affidavit to his State writ, admitted his/her performance was substandard and thus ineffective by not properly representing Petitioner?**

Petitioner was deprived effective assistance of counsel at trial. The Sixth Amendment, applicable to the States through the Due Process Clause of the Fourteenth Amendment, guarantees accused defendants the reasonably effective assistance of counsel. See **Johnson-V-Blackburn,** 778 F.2d 1044, 1049 (5th Cir. 1985); **Ricalday-V-Procunier,** 736 F.2d 203, 207 & n.4 (5th Cir. 1984). The test for establishing ineffective assistance of counsel in a capital murder trial is the two-prong test developed by the United States Supreme Court in **Strickland-V-Washington,** 466 U.S. 668, 694, 104 S.CT. 2052, 80 L.ED.2d 674 (1984).

To be entitled to habeas relief under an ineffective assistance of counsel claim, an Appellant must show:

(1) **That counsel's performance fell below an objective standard of reasonableness, by identifying acts or omissions showing that counsel's performance was deficient, and**

(2) **That, but for the unprofessional errors, there is a reasonable probability that the outcome of the proceeding would have been different.**

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed to the defendant by the Sixth Amendment. Second, the defendant must show that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is relaible. Id. at 687.

The court's factual determination is reasonable only in a manner "leading sensibly to conclusions of probability." See **Illinois-V-Rodriguez,** 497 U.S. 177, 185, 110 S.CT. 2793, 111 L.ED.2d 148 (1992).

Accordingly, the federal courts must generally make an independent determination of whether counsel's representation passed constitutional muster. See **Ricalday-V-Procunier,** 736 F.2d 203, 206 (5th Cir. 1984).

In the case at hand, Petitioner was charged with the offense of capital murder. The State's entire argument was based upon emotional gravitation heavilly conveyed to the jury. The case itself was founded on circumstancial evidence. During trial, Detective Cockrell testified that after the interview with the mother of the two victims, he believed that manslaughter which requires reckleness was the appropriate charge. (9 RR. pp. 221-22).

Detective Doug Phillips testified that he attended the autopsy, and, after confering with other detectives, he obtained a warrant to arrest Petitioner for the offenses of manslaughter and assault. (9 RR. pp. 239, 241-43).

During the State habeas proceeding, Petitioner raised the following grounds:

(1) Counsel Failed To File A Motion In Limine And Object To Inadmissible Testimony Regarding Applicant's Cruelty to Animals;

(2) Counsel Failed To File A Motion In Limine And Object To Inadmissible Testimony That Applicant Assaulted S.F. On Numerous Occasions;

(3) Counsel Elicited Testimony That Applicant Was Fired From His Job A Couple Days Before The Fatal Incident;

(4) Counsel Elicited Testimony That Applicant Was On Probation For Another Offense At The Time Of The Fatal Incident;

(5) Counsel Elicited Testimony That Applicant And S.F. Had To Move Out Of His Parents' Home Because He Previously Had An Altercation With His Father, And His Mother Was Not Comfortable With His living There;

(6) Counsel Failed To Object When The Judge Accused Him Of "Misleading The Witness" By asking Dr. Gruszecki Whether S.F.'s Purported Fall Could Have Contributed To Her losing The Babies And To The Judge's Comment, "Need I Add That She Also Retracted That.; And

(7) Counsel Dispareged Applicant During His Closing Argument.

During the course of investigating Petitioner's case for the purpose of filing his State Application For Writ of Habeas Corpus, habeas Counsel Randy Schaffer obtained a sworn affidait from trial attorney Joseph Garcia III, and Mr. Garcia admitted that he rendered ineffective assistance of counsel, by not properly objecting, disparaging the client he was actively defending, and failing to do important and mandatory obligations before and during Petitioner's trial.

Trial counsel admitted that he wasn't aware or familiar with the facts and circumstances in Petitioner's case. The Supreme Court in **Strickland-V-Washington,** 466 U.S. 668, 691 (1984) (The Sixth Amendment requires investigation and preparation, not only to exonerate, but also to secure and protect the right of the accused. Such constitutional rights are granted to the innocent and guilty alike, and failure to investigate and file appropriate motions is ineffective). See also **Kimmelman-V-Morrison,** 477 U.S. 365 (1986)(failure to investigate and present fourth amendment claim was constitutionally ineffective).

It is a lawyer's responsibility to learn as much as he can about every case. Counsel must do so as soon as possible, because time is of the essence. The speed or lack thereof to provide a meaningful investigation has an irrevarsible effect on the outcome of a criminal case. Physical evidence can become misplaced, or manipulated memories fade, from recall and witnesses have been known to move away and become furthermore unavailable to testify. Thus, too many details concerning the facts and circumstances in a criminal case.

In this case, counsel admitted that he failed to object, investigate, and even made improper comments about the Petitioner in this closing arguments. This was clearly ineffective assistance as counsel has already admitted to these claims himself. Had Petitioner's trial counsel provided effective assistance, there is a reasonable probability that the outcome of his trial would have been different.

**II. [Question Two] What amount of credibility does a court owe to an attorney who self-admits that he rendered ineffective assistance, when representing his or her client at trial?**

This is a question that has never been addressed by any court. This is a case of first impression. In this case, trial counsel Garcia self-admitted in a sworn affidavit that he did not provide effective assistance because:

(1) He was focused on trying to restate his recollection of S.F.'s testimony, despite the judge's comments, and he "did not want to continue or exacerbate the fight the fight and reinforce the judge's comments in the minds of the jurors." In retrospect, he believes that he probably should have objected and preserved the issue for appeal. (See affidavit attached to State Writ as - AX-3).

(2) He defended disparaging Petitioner during his closing: By providing that he, was trying to make the point that the jurors, if they were to be true to their oaths, were obliged to consider the medical evidence regardless of what Mr. Waldron or the complainant said. I hoped perhaps, mistakenly, that by acknowledging and absorbing some or all of the jurors' distaste and anger for what they were hearing and feeling based on their body language and facial expressions, I could reinforce the notion that their individual and collective duty was to faithfully consider the medical testimony from the medical experts on the most criticle issue that could lead them to understand that Mr. Waldron might not have been responsible for the deaths of the two fetuses. (See affidavit attached to State Writ as - AX-3).

**Affidavit of Attorney Gina Motz:**

(1) She did not consider filing a motion in Limine to exclude a multitude of extraneous offenses and, if it were denied, objecting at trial; that her failure to do so was not strategic; and that, in retrospect, she should have done so. (See affidavit attached to State Writ. AX - 2).

(2) Motz asserts in her affidavit that she did not have a a strategic reason for commiting any of the acts, that were presented in Petitioner's State Habeas Corpus Proceeding. (See affidavit attached to State Writ of Habeas Corpus. AX - 2).

The State court in its ruling held that despite all of the ineffective admissions by the Petitioner's trial attorneys, they still somehow provided effective assistance of counsel. Subsequently, the main issues are simple, yet how much credibility should be given to an attorney's admission that he or she rendered ineffective assistance of counsel?

The Supreme Court has not yet addressed the issue concerning admitted claims of ineffective assistance by a trial attorney.

Under **Strickland-V-Washington,** 466 U.S. 668, 687, 104 S.CT. 2052, 2064, 80 L.ED.2d 674 (1984), an ineffective assistance of counsel claim is subjected to a two-step analysis whereby the applicant must show that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different.

The Supreme Court has explained that strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments

support the limitations on investigation. **Wiggens-V-Smith,** 539 U.S. 510, 123 S.CT. 2527, 156 L.ED.2d 471 (2003). With this issue clearly presented, the case should have been reversed for a new trial. Two attorneys Motz and Garcia both signed sworn affidavits during the State habeas investigation, explaining that their defense of Petitioner was unquestionably ineffective, and after such, admissions came forth, the case should have been set-aside, and a new trial ordered. This is an important public interest.

**III. [Question Three] Whether in a writ proceeding, a court should resolve a claim of ineffective assistance of counsel in favor of a Petitioner, when the attorney admits under oath, that his representation of his client fell below as objective standard of reasonable assistance that was both deficient and prejudicial?**

There can be severe punishment for an attorney that is found to be ineffective in his life representation of an accused defendant. Therefore, when an attorney admits to the court that he or she rendered ineffective assistance, the statement should be given great weight, the case then be set-aside, and a new trial ordered. This court has never decided this issue before, but all of the lower courts that have, ultimately came to the conclusion that the attorney is not to be deemed credible in direct contradiction of their liscensing and qualifications provided by the State Bar. What credits make honest humility?

This court has decided that attorneys were ineffective without even having an affidavit from the lawyers agreeing to such. Allegations made against them, such as this case provides. See **Lee-V-United States,** 137 S.CT. 1958 (2017); **Buck-V-Davi,** 137 S.CT. 759 (2017); **Welch-V-United States,** 136 S.CT. 1257 (2016).

Therefore, it would be just and far within reason that this court should grant to hear this question and decide upon whether or not a case should be set-aside automatically when an attorney admits to his own ineffective assistance.

This is important to the general public's best interest, because citizens are entitled to the effective assistance of counsel, during any and all criminal proceedings.

## VI. REASON FOR GRANTING THE PETITION:

**IV. [Question Four] Whether a conviction should be set-aside when a trial Judge makes prejudicial remarks that show his bias against the defendant and then during the habeas corpus proceedings, the same judge recuses himself after the Petitioner's habeas attorney files a motion to recuse, based on the same statements that were made at trial?**

The Sixth Amendment to the Constitution guarantees everyone the right to a fair trial before an impartial tribunal. This is also grounded in the Fourteenth Amendment to the United States Constitution.

The Supreme Court in **Marshall-V-Jerrico, Inc.,** 446 U.S. 238, 64 L.ED.2d 182, 100 S.CT. 1610 (1980), states that the Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality is adjudication proceedings safeguards the two central concerns of procedural due process; the prevention of unjustified or mistaken deprivations and the promotions of participation and dialogue by affected individuals in the decision making process. See **Carey-V-Piphus,** 435 U.S. 247, 259-262, 98 S.CT. 1042-43, ... (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception

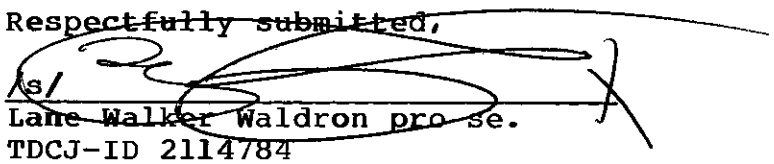
of the facts or the law. See **Mathews-V-Eldridge,** 424 U.S. 319, 344, 96 S.CT. 893, 907, 47 L.ED.2d 18 (1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," **Joint Anti-Fascist Committee-V-McGrath,** 341 U.S. 123, 172, 71 S.CT. 624, 649, 96 L.ED.2d 817 (1951)..., by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

In this case, the trial judge made several improper comments at Petitioner's trial, which showed his bias in the case. However, the trial judge still sat through the trial. When habeas counsel filed to recuse said Judge during the habeas proceedings, the trial judge promptly recused himself from the case. This should have mandated an automatic reversal, because it provides weight to Petitioner's claims and furthermore was tried before a truly biased and partial judge. This is an important decision to the public trust and interest.

## VII. CONCLUSION:

**WHEREFORE, PREMISES CONSIDERED,** Petitioner prays this Court grant his petition for Writ of Certiorari, order full briefs and oral arguments.

Respectfully submitted,



/s/

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