

IN THE SUPREME COURT
OF THE UNITED STATES

§

§ NO. 22-5216

Ken Paxton, Texas Attorney General. §
General.

PETITION FOR REHEARING

COMES NOW Petitioner Ray Salazar, Pro se, and Prays this Honorable Court of Justices grant a Rehearing pursuant to Supreme Court Rule 44. And thereafter, in "the interest of justice" grant his writ of Certiorari No.22-5216. In order to review the opinion of the Texas Fifth Circuit Court of Appeals for the following: 1) has entered a decision in conflict with the decision of another U.S. Court of Appeals on the same important matter; 2) has so far departed from the accepted and usual course of judgment proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisor power.

Standard And Applicable Law

The Supreme Court Rule 44.2., governs petitions for rehearing of orders denying petition of certiorari and extraordinary writs. Rehearing will be granted only upon a showing of "intervening circumstances of substantial or controlling effect". See, e.g., Massey v. United States, 291 U.S. 608-610, 54 S.Ct. 532, 78 L.Ed. 1019 (1934) (per curiam)(following rehearing, certiorari granted to review conviction under National Prohibition Act, because prohibition was repealed shortly after initial order denying certiorari); Sanitary Refrigerator Co. v. Winters, 280 U.S. 30. 34 n.1, 50 S.Ct. 9, 74

L. Ed. 147 (1929)(following rehearing, certiorari, granted after conflict arose in circuits following initial order denying petition). Or other "substantial grounds not previously presented". Substantial new grounds Sup. Ct. R. 44.2; See, e.g., Schriber-Schroth Co. v. Cleveland Trust Co., 305 U.S. 47, 50, 59 S.Ct. 8, 83 L.Ed. 34 (1938) (certiorari granted following showing conflict among circuits was unlikely because all potential litigants were located in same circuit).

Petitioner raises the question to this Court whether his timely filed objections to the magistrate's report but District Court's failure to review it's factual findings under it's clearly erroneous standard or legal conclusions de novo would be a "conflict among other circuit's on the same important matter? If so then making a showing of intervening circumstances of substantial or controlling effect, for a rehearing.

Petitioner timely filed objections to the Magistrate's report & recommendations, but Federal district court finding no error due to it's opinion that, "the court is of the opinion that the objections do raise issues that were adequately addressed in the report & recommendation. Therefore, finding no error, the court accepts & adopts the report and recommendation filed in this case".

~~The conflict~~
The conflict of this issue can be found in the following. See, e.g., Clisby v. Jones, 960 F.2d 925, (11th Cir. 1992), (quoting Blake v. Kemp, 758 F. 2d 523, 542(11th Cir.), cert., denied, 474 U.S. 998, 106 S.Ct. 374, 88 L.Ed. 2d 367 (1985), ("We are disturbed by the the growing number of cases in which we are forced to remand for consideration of issues the district court chose not resolve...

Blake, 758 F. 2d at 523. Accordingly, we now exercise our supervisory power over the district courts, see United States v. Jone, 899 F. 2d 1097, 1102 (11th Cir.), cert., denied, --U.S.--, 111 S.Ct. 225, 112 L. Ed. 230 (1990), (and instruct the district courts to resolve all claims for relief raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254(1988), regardless whether habeas relief is granted or denied. "A Claim for relief for purpose of this instruction is any allegation of a Constitutional violaiton").

In The Interest of Justice

The "The interest in finality of litigation must yield where the interest of justice would make unfair the strict application of the rules of the Supreme Court. This policy finds expression in the manner in which the Court exercises its power over its own judgment, both in civil and criminal cases." Waidla v. Davis, 2017 U.S. Dist. Lexis 209365. See also, e.g., Kinder v. Purdy, 222 F.3d 209 121 S.Ct. 894, 531, (Habeas Corpus relief is Extraordinary and is reserved for transgressions of constitutional rights, and for narrow range of injuries that could not have been raised on direct appeal, and that, if condoned, would result in complete miscarriage of justice").

REASONS FOR GRANTING REHEARING

Petitioner has throughly exhausted and diligently asserted his federal constitutional claims that are grounded and supported by court records and his documents demonstrating that his claims have merit, that a reasonable jurists would find debatable or incourage further proceedings. The record would show that he filed motions for evidentiary hearings in both state and federal habeas court's for matters outside the record for sixth amendment denial of constructive counsel

and diminished capacity and court's failure to conduct its sua sponte for competency hearing for it's awareness of defendant's mental health disorders before trial and after trial. Petitioner's procedural and due process clause were denied for arbitrary actions by not allowing matters outside the record to fully develop through his motions for evidentiary hearings. See, e.g., Slochower v. Board of Higher Education, 350 U.S. 551, 76 S.Ct. 637. 100 L. Ed. 692, 1956 U.S. Lexis 1137, reh'g denied, ("Protection of individual from arbitrary action is very essence of due process").

Suggestions In Support of Rehearing

Petitioner raised that his federal constitutional questions have not been allowed to develop or failed to adequately address using incorrect controlling state, and federal laws that the Supreme Court has already determined and held as precedent cases to follow.

The cornerstone of a petition for certiorari in a federal case is a showing that the question to be reviewed is one of general importance under Sup. Ct. R. 10(a)(b)(c). These are the federal constitution claims and questions whether: (1) defense counsel rendered constitutional sixth Amendment right to effective assistance in there awareness years prior to trial of their clients mental health disorders but failure to investigate, or obtain court appointed psychiatric assistance for the defense or have used as mitigating evidence throughout trial?; See, e.g., Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. at 2066, ("[C]ounsel has duty to make reasonable investigation or to make a reasonable decision that makes particular investigation unnecessary.");

Or whether for trial court's awareness prior to and post-conviction of defendant's mental health disorders but failure to conduct a competency hearing would be considered constitutional under the Due Process Clause of the U.S. 14th Amendment? Decision of this question turns not on counsel's or court's awareness, but for whether for counsel's deficient performance cause prejudice to their clients defense that allowed a court to try and convict a mentally incompetent defendant render his conviction unconstitutional under the Due Process Clause of the 14th Amendment? See, e.g., Medina v. California, 505 U.S. 437, 112 S.Ct. 2572 (1992) headnote 9: ("A defendant has a constitutional right not to be tried while legally incompetent, and that a state's failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial"... See, also, Drope v. Missouri, 420 U.S. 162-HN2; Cooper v. Okla., 517 U.S. 348-HN8; and Jackson v. Indiana, 406 U.S. 715, HN-21.; See, Strickland, at 466 U.S. at 684 L.Ed. HN-3, ("In a long line of cases that include Powell v. Alabama, 287 U.S. 45 (1932), Johnson v. Zerbst, 304 U.S. 458 (1938). and Gideon v. Wainwright, 372 U.S. 335 (1963), ("this Court has recognized that the Six Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic element of a fair trial largely through the several provisions of the Six Amendment, including the Counsel Clause..;

(3) defense counsel's own letter stating erroneous advice and denying his request to appeal the voluntariness of his plea or was abandon by defense counsel during the 30 period for filing notice of appeal? Decision of this question not only turns on counsel's erroneous advice or failure to file requested notice, but whether defendant was constructively denied counsel during a critical stage of a post-conviction? See, e.g., Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed. 2d 821 (1985) ("The Due Process Clause of the 14th Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal as of right") See also, Roe v. Flores-Ortega, 528 U.S. -HN 6 ("Counsel has a constitutionally-imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want an appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he interested in appealing"); See also, e.g., Garza v. Idaho, 139 S.Ct. 738: 203 L.Ed. 2d 77; 2019 Lexis 15 96; HN-12 (To succeed in an ineffective-assistance claim in the appeal context, a defendant need make only one showing: that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. HN-15 (When counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal, with no need for a further showing of his claims merit, regardless of whether the defendant has signed an appeal waiver).; (4) defense counsel's failure to timely investigate the exculpatory evidence and informed their client would have changed the entire proceedings or possibly would have been grounds

to have dismiss the case for a second time for no evidence or acquittal? The charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the 14th Amendment. Decision of this question turns not on the sufficiency of the evidence, but on whether the conviction rest upon any evidence at all.

CONCLUSION

Petitioner ask for this Court to take judicial notice of entire record and find. Petitioner raised issues showing extraordinary circumstances exists when questions involved was pure questions of constitutional rights and federal law violations and miscarriage of justice would result from Supreme Court's Justices denying petition for rehearing or not granting writ of certiorari No.22-5216.

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, Ray Salazar, and make certification that his petition for rehearing is presented to this Court in good faith pursuant to Rule 44. Petitioner further states the following:

This Court entered its order denying petitioner's writ of certiorari No.22-5216 on October 3, 2022. Petitioner has diligently asserted and exhausted his constitutional and federal questions of law to this Court meritious grounds to justify the granting of rehearing in this case of great importance and petition is brought in good faith and not for delay.

Respectfully submitted

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