No. 22-527

In The
Supreme Court of the United States

SAMMY JAY RIDDLE,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition For A Writ Of Certiorari To The Texas Court Of Criminal Appeals

PETITIONER'S REPLY TO THE STATE OF TEXAS' BRIEF IN OPPOSITION

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INTRODUCTION

This Court's federal habeas corpus jurisprudence—including the many hurdles erected before a federal habeas corpus petitioner may receive relief under 28 U.S.C. § 2254—is premised on the fundamental assumption, rooted in federalism and Article VI of the Constitution, that state courts will show sufficient solicitude toward criminal defendants' federal constitutional rights. *See*, *e.g.*, *Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993) ("Absent affirmative evidence that state-court judges are ignoring their oath [to enforce the U.S. Constitution in criminal cases], we discount petitioner's argument that [state] courts will respond to our ruling [imposing a less demanding harmless-error standard on federal habeas corpus review] by violating their Article VI duty to uphold the Constitution."). The same assumption applies to state prosecutors. *Cf. Dombrowski v. Pfister*, 380 U.S. 479, 484 (1965) (assuming "that state courts and prosecutors will observe constitutional limitations"). The state courts and prosecutors in petitioner's case trampled on that assumption.

The state habeas process in this case, coupled with the State's frivolous brief in opposition (BIO), offers "affirmative evidence" that Texas courts and prosecutors have successfully obstructed judicial review of petitioner's substantial federal constitutional claims. As discussed in the petition, the Texas courts denied petitioner an evidentiary hearing on his substantial

ineffective assistance of counsel claim when a genuine dispute about the material facts existed based on an affidavit from petitioner's trial counsel, strongly corroborated by a statement that he made on the record that the trial prosecutor did not challenge.[1]

Instead, the state habeas prosecutor drafted perfunctory proposed findings of fact and conclusions of law, which the state habeas trial court and the Texas Court of Criminal Appeals (TCCA) adopted verbatim. Pet. 5-6 & n.4.[2] Those findings credited the trial prosecutor's affidavit despite trial counsel's contradictory affidavit, which the findings ignored,[3] and concluded that petitioner "fail[ed] to state sufficient specific facts to

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[1] At the 2015 hearing on the State's motion to revoke petitioner's probation, trial counsel stated, "at one time, we even had been offered a misdemeanor" (11 R.R. 221). Prosecutor Kathy Esquivel ***did not dispute that assertion***. Only seven years later, in her 2022 affidavit, did she deny offering petitioner a misdemeanor plea bargain before he pled guilty to a first degree felony that carried a potential term of life imprisonment.

[2] This Court has "criticized courts for their verbatim adoption of findings of fact prepared by prevailing parties, particularly when those findings have taken the form of conclusory statements unsupported by citation to the record." *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 572 (1985); *see also Jefferson v. Upton*, 560 U.S. 284, 294 (2010) (per curiam) (citing *Anderson* with approval in federal habeas corpus case).

[3] The state court findings tersely stated, "Counsel for the State Kathy Esquivel filed an affidavit addressing the matters raised by Appellant. . . . Said Affidavit by counsel and supporting matters are attached and are incorporated herein for all purposes. . . . Applicant received effective assistance of counsel." Cert. App. 3.

support his grounds for relief." Cert. App. 3.[4] The TCCA explicitly adopted that "finding." Cert. App. 1.

Read literally, the TCCA held that petitioner failed to allege viable constitutional claims. That holding was patently wrong. Petitioner specifically alleged detailed, cognizable claims of ineffective assistance of counsel and a due process violation that were supported by the state court record.

The State's BIO demonstrates that Texas does not take seriously a criminal defendant's right to seek judicial review of alleged violations of the Federal Constitution. The State frivolously asserts that an independent and adequate state law ground prevents this Court from exercising jurisdiction over this case. Ironically, the same prosecutor who wrote the BIO also drafted the state habeas finding and conclusion that the trial court adopted. Those findings ***addressed the merits*** of petitioner's constitutional claims and did ***not*** erect any procedural bar that would deprive this Court of jurisdiction over the case.

After the State waived its right to respond to the petition, this Court ordered the State to respond to the merits of the questions presented. The BIO attempts to erect a non-existent jurisdictional bar to this Court's review, but it fails to address the merits of the

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[4] The prosecutor's sole proposed "conclusion of law," adopted by the trial court, similarly stated, "There are no material, previously unresolved issues of fact which are material to the legality of Applicant's conviction and sentence and there being ample evidence in the record for the Court to rule on the relief sought." Cert. App. 4.

significant issues raised: (1) whether petitioner is entitled to an evidentiary hearing on his substantial ineffective assistance of counsel claim based on a genuine dispute as to material facts, and (2) whether his guilty plea violated due process because the trial judge failed to advise him that he was waiving his constitutional right to have each element of the alleged offense proven beyond a reasonable doubt. Thus, the State not only failed to respect petitioner's constitutional rights but also failed to meaningfully comply with this Court's direction to respond to the petition.

ARGUMENT

I. No Independent And Adequate State Law Ground Exists In This Case.

Without even citing the relevant jurisdictional statute, the State argues that the so-called "State Grounds Doctrine" forecloses this Court's exercise of jurisdiction under 28 U.S.C. § 1257(a).[5] *See* Brief in Opposition, at 6-8. The State's argument turns on how the intermediate Texas Court of Appeals addressed petitioner's ineffective assistance claim on direct appeal in 2018. *See id.* at 1-2 (quoting Texas Court of Appeals' opinion on direct appeal, where that court refused to address merits of ineffective assistance claim because petitioner did not first raise it on appeal from original order placing him on probation and waited to raise it after probation was revoked); *id.* at 6 (" . . . Petitioner

[5] The State presumably is referring to the "independent and adequate state law grounds" doctrine.

did not complain of ineffective assistance . . until after Petitioner had violated the terms of his probation and the State sought to revoke his probation. According to State law, . . . , Petitioner may not complain on appeal of error in the original plea proceeding.").

The State's jurisdictional argument is frivolous. This Court's well-settled precedent, which the State ignores in the BIO, rejects that argument. The state habeas trial court's findings and conclusions addressed the merits of the federal constitutional claims and did not invoke any procedural bar. The TCCA adopted the findings. In short, no state court or prosecutor referred to a procedural bar or other independent and adequate state law ground that would prevent this Court from reviewing the merits of petitioner's federal constitutional claims.[6] As this Court held in *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983):

> [W]hen, as in this case, a state court decision fairly appears to rest primarily on federal law,

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[6] Although the TCCA did not expressly adopt the sole conclusion of law recommended by the trial court (but also did not reject it), this Court assumes that the TCCA did adopt it. *See Foster v. Chatman*, 578 U.S. 488, 498 n.3 (2016) ("[It] is perfectly consistent with this Court's past practices to review a lower court decision—in this case, that of the Georgia habeas court—in order to ascertain whether a federal question may be implicated in an unreasoned summary order from a higher court."); *cf. Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018) ("We hold that the federal [habeas corpus] court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning."). That sole conclusion of law did not erect any procedural bar.

> or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.

This Court clearly has jurisdiction over petitioner's under *Long*.

This Court's precedent also forecloses the State's focus on the intermediate appellate court's decision on direct appeal, rather than the TCCA's decision in the habeas corpus proceedings. *See Ylst v. Nunnemaker*, 501 U.S. 797, 801 (1991) ("State procedural bars are not immortal[.] . . . [T]hey may expire because of later actions by state courts. If the last state court to be presented with a particular federal claim reaches the merits, it removes any bar to federal-court review that might otherwise have been available."); *see also Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985) ("The mere existence of a basis for a state procedural bar does not deprive this Court of jurisdiction; the state court must actually have relied on the procedural bar as an independent basis for its disposition of the case."). Thus, any procedural bar erected by the intermediate appellate court in 2018 is irrelevant because the TCCA subsequently addressed the merits of the federal constitutional claims in the habeas proceeding and did not invoke a procedural bar as an independent and adequate state law ground.

Finally, even assuming *arguendo* that the intermediate appellate court's procedural default ruling remained relevant after the TCCA's subsequent habeas decision, that finding would not constitute an independent and adequate state law ground to deprive this Court or jurisdiction to review the merits of the federal claims. Petitioner did not appeal from the order placing him on probation, so he did not have an opportunity to raise the claim that his plea counsel was ineffective in failing to advise him of the misdemeanor offer. In any event, he was still represented by plea counsel, who had a conflict that prevented him from filing an appeal alleging his own ineffectiveness. *See Guinan v. United States*, 6 F.3d 468, 471 (7th Cir. 1993) (Posner, J.) ("If [a criminal defendant] was represented on appeal by the very lawyer who he now claims did not represent him effectively at the trial, then he could not as a practical matter have raised the ineffective assistance claim on direct appeal, so there is no forfeiture."); *Manning v. Foster*, 224 F.3d 1129, 1134 (9th Cir. 2000) (same); *Neill v. Gibson*, 263 F.3d 1184, 1195-96 (10th Cir. 2001) (same); *see also Massaro v. United States*, 538 U.S. 500, 503 (2003) ("[A]n attorney . . . is unlikely to raise an ineffective-assistance claim against himself."); *cf. Maples v. Thomas*, 565 U.S. 266, 285 n.8 (2012) (noting that "a significant conflict of interest arose for the firm" when "the firm's interest in avoiding damage to its own reputation was at odds with Maples' strongest argument—i.e., that his attorneys had abandoned him").

Accordingly, this Court has jurisdiction over petitioner's federal constitutional claims under 28 U.S.C. § 1257(a).

II. The Questions Presented Are Worthy Of This Court's Review.

Other than the weak argument that this Court lacks jurisdiction to review the case, the BIO does not assert that the questions presented are unworthy of this Court's review on the merits. The State explains, "[r]ather than address these questions [presented] individually, the State will address the Petition as a whole." BIO, at 4. Yet the BIO ignores the two issues raised in the petition: (1) whether Texas courts erred in denying petitioner an evidentiary hearing on his substantial ineffective assistance claim, in conflict with both the Due Process Clause and this Court's well-established precedent,[7] and (2) whether a trial court must advise a defendant who pleads guilty that he is waiving his right to require the prosecution to prove his guilt beyond a reasonable doubt. Both issues are worthy of this Court's review. Pet. at 11-23.

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[7] *See Commonwealth of Pennsylvania ex rel. Herman v. Claudy*, 350 U.S. 116, 123 (1956) ("Under the allegations here petitioner is entitled to relief if he can prove his [constitutional claim]. He cannot be denied a hearing merely because the allegations of his petition were contradicted by the prosecuting officers."); *see also Morales v. State of N. Y.*, 396 U.S. 102, 105-06 (1969) (per curiam) (remanding to state courts for evidentiary hearing on petitioner's federal constitutional claim because record did not "fully illuminate[ ] the factual context in which the [constitutional] question ar[ose]").

Petitioner's case presents this Court with an excellent vehicle to review the merits of these two worthy issues. No procedural or jurisdictional bars prevent merits review, and the state court record squarely raises both issues. Regarding petitioner's ineffective assistance claim, the record demonstrates a genuine dispute over the facts material to resolve the claim. That dispute entitles petitioner to an evidentiary hearing under this Court's precedent. Regarding petitioner's due process challenge to his guilty plea, the record of the plea proceeding demonstrates that the trial judge who accepted the plea never admonished petitioner that he was waiving his constitutional right to have the State prove each element of the alleged offense beyond a reasonable doubt. The record fully supports this due process claim without the need for additional evidentiary development. *Cf. Parke v. Raley*, 506 U.S. 20 (1992) (rejecting state habeas petitioner's collateral challenge to conviction under *Boykin v. Alabama*, 395 U.S. 238 (1969), where no record of plea proceedings existed). The due process claim presents a clean, straightforward legal question of significant importance that this Court has not but should address.

CONCLUSION

Nearly six decades ago, this Court observed that it was "not blind to the fact that the federal habeas corpus jurisdiction has been a source of irritation between the federal and state judiciaries" and that "this friction might be ameliorated if the States would . . . provide

state procedures, direct or collateral, for a full airing of federal claims" of state criminal defendants. *Henry v. Mississippi*, 379 U.S. 443, 453 (1965). Texas, despite having the opportunity, did not provide petitioner with a meaningful procedure to have a "full airing" of his constitutional claims. This Court should grant certiorari and address the merits of the questions presented. At a minimum, it should grant certiorari, vacate the TCCA's judgment, and remand for an evidentiary hearing on petitioner's substantial ineffective assistance claim.

Respectfully submitted,

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