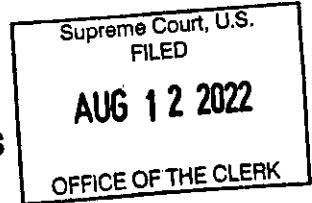


22-5356

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JOSEPH M. BOURGEOIS ^{PRAE SE} — PETITIONER
(Your Name)

vs.

COURT CRIM. APPEALS TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF CRIMINAL APPEALS OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSEPH MONTREL BOURGEOIS
(Your Name)

JESTER III UNIT 3 JESTER ROAD
(Address)

RICHMOND, TEXAS 77406
(City, State, Zip Code)

—
(Phone Number)

QUESTION(S) PRESENTED

DOES BLOCKBURGER VS. UNITED STATES, 284 U.S. 299 [1932] APPLY TO MY CASE? DOUBLE JEOPARDY

DOES BIRCHFIELD (S) CONCURRENT RULINGS APPLY TO MY CASE? BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 216 BIRCHFIELD VS. NORTH, DAKOTA, 579 U.S. 438, 476, 477/2011

DOES COLEMAN VS. THOMPSON, 501 U.S. 722, 729, 730 [1991] APPLY TO MY CASE? PROCEDURAL DEFAULT EXCEPTION

DOES HARRIS VS. OKLAHOMA, 433 U.S. 682 [1977] APPLY TO MY CASE? MORE SERIOUS FIRST, LESSER INCLUDED BARRED:

DOES MASSARO VS. UNITED STATES, 538 U.S. 500 [2003] APPLY TO MY CASE? EXCEPTION FOR INEFFECTIVE ASSISTANCE OF COUNSEL!

DOES MARTINEZ VS. RYAN, 566 U.S. 1 [2012] APPLY TO MY CASE?

CAN A STATE COURT REFUSE TO FOLLOW A UNITED STATES SUPREME COURT PRECEDENT?

DOES SLACK VS. McDANIEL APPLY TO MY CASE?
"SUBSEQUENT APPLICATION"
DID DEFENSE COUNSEL VIOLATE STRICKLAND'S
GUARANTEE? (i)

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:

RELATED CASES

COURT OF CRIMINAL APPEALS OF TEXAS.
TRIAL COURT NUMBER 14-CR-2877-83-3, WR-85, 655-C
JUDGMENT ENTERED JUNE 8, 2022: DISMISSED WITHOUT WRITTEN ORDER SUBSEQUENT APPLICATION FOR WRIT OF HABEAS CORPUS.

COURT OF CRIMINAL APPEALS OF TEXAS
TRIAL COURT NUMBER 15-CR-2476-83-2 WRIT-85, 655-05: JUDGMENT ENTERED JUNE 8, 2022: DISMISSED WITHOUT WRITTEN ORDER, SUBSEQUENT WRIT/APPLICATION FOR A WRIT OF HABEAS CORPUS.

SUPREME COURT OF THE UNITED STATES:

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DENIAL: GALVESTON COUNTY, TEXAS

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APPENDIX C WRIT/APPLICATION, ARTICLE 1107 HABEAS CORPUS.

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

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COLEMAN VS. THOMPSON, 501 U.S. 722, 729, 730 [1991]	Q(iii)
HARRIS VS. OKLAHOMA, 433 U.S. 682	[1977] (iii)
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MARTINEZ VS. RYAN, 566 U.S. 1	[2012] (iii)
MASSARO VS. UNITED STATES, 538 U.S. 500 [2003]	(iii)
STRICKLAND VS. WASHINGTON, 466 U.S. 668 [1984]	(iii)
SLACK VS. McDANIEL, 529 U.S. 473	[2000] (iii)

STATUTES AND RULES

4TH AMENDMENT SEARCH AND SEIZURE PROTECTION CLAUSE
MUST OBTAIN SEARCH WARRANT.

5TH AMENDMENT DOUBLE JEOPARDY CLAUSE, DUE PROCESS

6TH AMENDMENT EFFECTIVE ASSISTANCE OF COUNSEL

14TH AMENDMENT DUE PROCESS OF LAW

14TH AMENDMENT EQUAL PROTECTION CLAUSE

14TH AMENDMENT EFFECTIVE ASSISTANCE OF COUNSEL
GUARANTEE.

OTHER

SEE GENTRY VS. STATE, TR. CT. NO. 12-13-00168-CR.

APPEAL FROM THE 241ST JUDICIAL COURT OF SMITH COUNTY,
TYLER, TEXAS: TR. CT. NO. 241-1540-22: CASE REVERSED
AND REMANDED [WARRANTLESS BLOOD DRAW].

DATE OF JUDGMENT AUGUST 27, 2014, CONFLICT WITH
THE 56TH DISTRICT (iii) COURT OF ANGELINA COUNTY TEXAS.

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 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 _____ 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 JUNE 8, 2022. A copy of that decision appears at Appendix B.

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

FOURTH AMENDMENT: TO THE UNITED STATES CONSTITUTION. GUARANTEES THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR.. PERSONS, HOUSES, PAPERS, EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES. "WARRANTLESS BLOOD DRAW ON MAY 02, 2014"

FIFTH AMENDMENT: PROVISIONS CONCERNING PROSECUTION AND DUE PROCESS OF LAW; "DOUBLE JEOPARDY RESTRICTION PRIVATE PROPERTY NOT TO BE TAKEN WITHOUT COMPENSATION";

PROVISIONS: NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW,

ON JANUARY 25, 2016 "PETITIONER" JOSEPH BOURGEOIS ENTERED A PLEA AGREEMENT,

PLEADING GUILTY TO THE OFFENSE OF INTOXICATION MANSLAUGHTER (COUNT-I IN CAUSES NUMBER 14-CR-287) AND INTOXICATION ASSAULT (COUNT-I IN CAUSE NUMBER-15-CR-1476), ON THE SAME DATE, IN EACH CASE, THE TRIAL COURT ENTERED A "WEAPON" A DEADLY WEAPON" FINDING, AND SENTENCED TO,.. TWO 15 YEAR TERMS.

CONSTITUTIONAL AND STATUTORY PROVISIONS
IN CAUSE NUMBER-14-CR-2877) AND IN CAUSE
NUMBER-15-CR-1476]

(1) INTOXICATION MANSLAUGHTER-14-CR-2877
(2) INTOXICATION ASSAULT-15-CR-1476

BOTH OF THESE CHARGES ARISE FROM THE SAME
ACCIDENT ON MAY 02, 2014. DOUBLE JEOPARDY
APPLIES?

SIXTH AMENDMENT: ASSISTANCE OF COUNSEL,

14TH AMENDMENT: DUE PROCESS OF LAWS AND
EQUAL PROTECTION OF LAWS.

CONSTITUTIONAL EFFECTIVE ASSISTANCE
OF COUNSEL.

ON JANUARY 25, 2016 ATTORNEY GREG RUSSELL
HAD ME PLEA GUILTY TO (INTOXICATION MANSLAUGHTER
(CAUSE NUMBER-14-CR-2877) AND IN CAUSE NUMBER-
(15-CR-1476) INTOXICATION ASSAULT) THESE ARE THE
SAME CHARGES?

STATEMENT OF THE CASE

ON MAY 02, 2014 I WAS INVOLVED IN A CAR ACCIDENT IN GALVESTON COUNTY, TEXAS. I WAS TAKEN TO THE HOSPITAL WHERE MY BLOOD WAS TAKEN WITHOUT A SEARCH WARRANT OR COURT ORDER. "WARRANTLESS BLOOD DRAW. ON JULY 08, 2016 I FILED SEPARATE HABEAS APPLICATIONS, ARTICLE 11.07'S. PRO SE APPLICATIONS" IN CAUSE NUMBERS - 14-CR-2877-83 AND 15-CR-1476-83 ON SEPTEMBER 21, 2016. THE CRIMINAL COURT OF APPEALS OF TEXAS, IN SEPARATE ORDERS DENIED EACH HABEAS APPLICATION, WITHOUT WRITTEN ORDER.

THE TWO CONCURRING BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 2160 AND BIRCHFIELD VS. NORTH DAKOTA, 579 U.S. 438, 476, 477, "OPINION ISSUED JUNE 23, 2016, RETROACTIVE TO CASES ON COLLATERAL REVIEW. THERE IS NO WAY I "COULD HAVE KNOWN ABOUT THESE RULINGS PRIOR TO FILING MY FIRST ARTICLE 11.07'S ON JULY 08, 2016 WITH THE COURT OF CRIMINAL APPEALS OF TEXAS. ON APRIL 13, 2021 I FILED A HABEAS CORPUS APPLICATION(S) IN CAUSE NUMBER - 14-CR-2877-83 AND CAUSE NUMBER - 15-CR-1476-83 ON JUNE 2, 2021 THE COURT OF CRIMINAL APPEALS DISMISSED THE APPLICATION" A SUBSEQUENT APPLICATION(S).

ON MARCH 25, 2022, I FILED THE INSTANT HABEAS APPLICATIONS. ON JUNE 08, 2022 COURT OF CRIMINAL APPEALS DISMISSED WITHOUT WRITTEN ORDER.

STATEMENT OF THE CASE

ALL FEDERAL CONSTITUTIONAL CLAIMS ARE EXHAUSTED. IN THE 56TH JUDICIAL COURT OF GALVESTON COUNTY TEXAS. THE CLAIMS ARE... "4TH AMENDMENT" UNREASONABLE SEARCH AND SEIZURE. WARRANTLESS BLOOD DRAW ON MAY 02, 2014.

"5TH AMENDMENT" DOUBLE JEOPARDY VIOLATION" CHARGES STEMMING FROM THE SAME ACCIDENT ON MAY 02, 2014. DUE PROCESS OF LAWS

"INTOXICATION MANSLAUGHTER: CAUSE NO. 14-CR-287; "INTOXICATION ASSAULT: CAUSE NO. 15-CR-1478-83 PLEADED GUILTY TO BOTH CHARGES ON THE SAME DAY JANUARY 25, 2016.

"6TH AMENDMENT" INEFFECTIVE ASSISTANCE OF COUNSEL". ATTORNEY GREG RUSSELL" NEGOTIATED TWO - PLEA BARGAINS FOR THE SAME CRIME ON THE SAME DAY JANUARY 25, 2016.

"14TH AMENDMENT" DUE PROCESS OF LAWS AND EQUAL PROTECTION OF LAWS; UNREASONABLE SEARCH AND SEIZURE; EFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT OF THE CASE

ON APRIL 13, 2021 APPLICANT FILED A HABEAS CORPUS WITH THE CONVICTING COURT. THE 56TH JUDICIAL COURT AN ARTICLE 1107 ON THE BASIS OF THE RETROACTIVITY OF THE BIRCHFIELD VS. NORTH DAKOTA, 136 S.CT. 2160 [2016] "CONCURRING JUDGMENTS" BIRCHFIELD VS. NORTH DAKOTA, 579 U.S. 438, 476, 477, OPINION ISSUED JUNE 23, 2016, WARRANTLESS, BLOOD DRAWS OR URINE SAMPLES. I TOLD THE STATE COURT OF THE 56TH JUDICIAL COURT OF GAVESTON COUNTY, TEXAS. THAT THE BIRCHFIELD RULING(S) APPLIED TO MY CASE. THAT THE INSTANT CLAIMS FILED ON THIS CLAIM DID NOT CONTAIN SPECIFIC FACTS SUFFICIENT TO ESTABLISH, BY A PREPONDERANCE OF THE EVIDENCE, THAT NO RATIONAL JUROR COULD HAVE FOUND THE APPLICANT GUILTY BEYOND A REASONABLE DOUBT.

THIS IS CONTRARY TO STRICKLAND VS. WASHINGTON 466 U.S. 668, 694 [1984]. A "REASONABLE" PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUT-COME.

REASONS FOR GRANTING THE PETITION

RULE 10.(b)

THE 56TH JUDICIAL STATE COURT OF GALVESTON COUNTY TEXAS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN - A WAY THAT CONFLICTS WITH ANOTHER STATE COURT.

IN GENTRY VS. STATE, TRIAL COURT NO. 12-13-00168-CR,

APPEAL FROM 241ST JUDICIAL COURT OF SMITH

COUNTY, TEXAS, TYLER, TEXAS.

CASE REVERSED WARRANTLESS TRIAL COURT NO. 241-1540-127 BLOOD DRAW. REVERSED AND REMANDED.

JUDGMENT AUGUST 23, 2014.

RULE 10.(b)

ARKANSAS SUPREME COURT RULED THAT A STATUTE THAT ALLOWS A WARRANTLESS BLOOD DRAW BASED ON..."IMPLIED CONSENT" VIOLATED THE FOURTH AMENDMENT. WHEN APPLIED TO A DEFENDANT IN A "NEGLIGENCE HOMICIDE" CASE. THE APRIL 26, 2018 "OPINION" REVERSED AND REMANDED FOR A NEW TRIAL WITHOUT

THE IMPROPERLY OBTAINED BLOOD EVIDENCE.

THE STATE DID NOT MEET THAT OR ANY BURDEN

BECAUSE THE TRIAL COURT DID NOT CONDUCT A "SUPPRESSION HEARING" CONSIDER TESTIMONY OR

REVIEW ANY EVIDENCE ON THE MATTER.

BETWEEN THE CONSTITUTIONAL PROBLEM AND THE LACK OF ACTUAL VOLUNTARY CONSENT. THE COURT FOUND THE PROPER REMEDY TO BE SUPPRESSION OF THE EVIDENCE.

SEE: DORTCH VS. STATE, 544 S.W. 3d 518 [ARKANSAS-2018]

REASONS FOR GRANTING PETITION

RULE 10. (C)

A STATE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT.

THE 56TH JUDICIAL DISTRICT COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

CONTRARY TO CLAUSE STANDARD FOR GRANTING RELIEF

THE COURT "HELD" IN WILLIAMS VS. TAYLOR, 529 U.S. 362 [2000]

THE COURT (HELD) THAT (d)(1)'S CONTRARY TO CLAUSE "REQUIRED THE "REJECTION OF STATE COURT DECISIONS WHICH WERE SUBSTANTIALLY" DIFFERENT FROM RELEVANT PRECEDENTS OF THIS COURT.

THE COURT GAVE AN EXAMPLE OF A...
MISINTERPRETATION OF STRICKLAND VS. WASHINGTON,
466 U.S. 668, 694 [1984]

REASONS FOR GRANTING PETITION
STANDARD FOR GRANTING RELIEF (d)(1)'S
IF A STATE COURT WERE TO REJECT A PRISONER'S
CLAIM OF "INEFFECTIVE ASSISTANCE OF COUNSEL-
ON THE GROUNDS THAT.. THE PRISONER HAD.. NOT
ESTABLISHED BY A PREPONDERANCE OF THE
EVIDENCE.. THAT THE RESULT OF THE CRIMINAL
PROCEEDING WOULD HAVE BEEN DIFFERENT.

STANDARD FOR GRANTING RELIEF

WILLIAMS VS. TAYLOR, 529 U.S. 362, 409, 410 [2000]
IN ADDITION TO.. THE SITUATION WHERE A STATE
COURT "DECISION IS "CONTRARY TO OR AN..
UNREASONABLE" "APPLICATION OF CLEARLY ESTABLISHED
CONSTITUTIONAL LAW 28 U.S.C. (d)(2) PROVIDES THAT A
STATE COURT "DECISION MUST BE REVERSED AND
RELIEF MUST BE "GRANTED".

IF THE STATE COURT PROCEEDING RESULTED IN.. A
DECISION THAT WAS BASED ON AN UNREASONABLE
DETERMINATION OF THE FACTS IN LIGHT OF THE
EVIDENCE PRESENTED IN THE STATE COURT...
PROCEEDING.

THE 56TH JUDICIAL COURT OF GALVESTON COUNTY, TEXAS
CORRECTLY IDENTIFIED THE GOVERNING PRINCIPLE,
BUT UNREASONABLY APPLIED THAT PRINCIPLE TO.. THE
FACTS OF PRISONER'S CASE.

WILLIAMS VS. TAYLOR, 529 U.S. 362, 412 [2000]

REASONS FOR GRANTING PETITION

IN COLEMAN VS. THOMPSON, 501 U.S. 722, 729, 730 E1991
WE CONSEQUENTLY READ COLEMAN AS CONTAINING AN
"EXCEPTION" ... ALLOWING A FEDERAL HABEAS COURT TO
FIND CAUSE, THEREBY "EXCUSING" A DEFENDANT'S ...
"PROCEDURAL DEFAULT WHERE

(1) THE CLAIM OF "INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL" WAS A "SUBSTANTIAL CLAIM.
DOUBLE JEOPARDY CLAUSE VIOLATION.

(2) THE CAUSE CONSISTED OF THERE BEING NO
COUNSEL DURING THE STATES' COLLATERAL REVIEW
PROCEEDING.

IN MARTINEZ VS. RYAN, 566 U.S. 1 (2012)

SUPREME COURT OF THE UNITED STATES "HELD"
THAT MARTINEZ'S HOLDING APPLIES IN TEXAS.
THE COURT [HELD] A PROCEDURAL DEFAULT WILL
NOT BAR A FEDERAL HABEAS COURT FROM HEARING
A "SUBSTANTIAL CLAIM OF INEFFECTIVE ASSISTANCE
AT TRIAL".

IF IN THE "INITIAL REVIEW COLLATERAL PRO-
CEEDING" THERE WAS NO COUNSEL.

REASONS FOR GRANTING PETITION

IN MASSARO VS. UNITED STATES, 538 U.S. 500 [2003]
"EXCEPTION FOR "INEFFECTIVE ASSISTANCE"

ALLEGATIONS

THE SUPREME COURT'S UNANIMOUS DECISION
ACCORDINGLY

AN INEFFECTIVE ASSISTANCE" CLAIM BY A
PRISONER.. MAY BE BROUGHT" IN COLLATERAL
PROCEEDING.

UNDER 2254 "STATE PRISONER..."
WHETHER OR NOT THE ISSUE COULD HAVE BEEN
RAISED ON DIRECT APPEAL.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph M. Bougeois

Date: AUGUST 3, 2022