

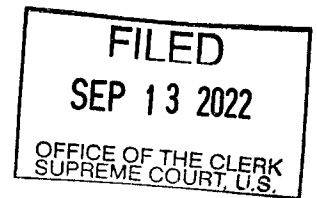
22-5643

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Derek Lee Casey Jr — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Court of Criminal Appeal in the state of Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Derek Lee Casey Jr
(Your Name)

1992 Helton Rd.
(Address)

Pampa, TX 79065
(City, State, Zip Code)

(806) 665-7070
(Phone Number)

QUESTION(S) PRESENTED

Mr. CASEY RAISED AN ineffective assistance of Counsel claim for being conveyed misinformation that discovery showed that police officers positively identified themselves.

At punishment, Officer Katie Snell testified that neither officers involved in the shooting verbally identified themselves, contradicting the very information that trial Counsel John Young used to persuade Mr. CASEY into pleading guilty.

Trial Counsel's misrepresentation of the facts of the Evidence within the discovery can be confirmed through trial Counsel's habeas Affidavit.

This specific ground was argued in the "Amended" Writ of habeas Corpus. The case thus presents the following questions.

1. Did the trial Court and the Court of Criminal Appeals Err by neglecting to Address the Amended Ground in the findings of facts and conclusions of Law?
2. Had the reviewing Court Adequately Addressed the Amended ground should the Court have granted relief due to plea being involuntary for misadvice?
3. Did the reviewing Court properly Apply Strickland to the Amended ground of I. A. C. as well as All the claims of I. A. C. in the original writ?
4. Does the Affirmatively found Erroneous Advice of trial Counsel Equate to a Reversible Error when defendant Admits to guilt At punishment phase?

Question(s) Presented

Mr. Casey Also Alleged in his 11.07 Writ of habeas Corpus that Counsel was operating under a potential conflict of interest from being indicted on several felonious charges in which he was later found guilty.

Trial counsel had Mr. Casey Sign A Waiver of Conflict-free Counsel after signing the guilty plea Admonishments giving up his 6th and 14th Amendment right to jury trial.

In the trial courts response to Mr. Casey's Application for writ of habeas corpus (see Appendix B.1 the court stated that they were "Aware of the criminal charges Against Mr. Casey's trial Counsel And that No Additional inquiry was needed".

THE CASE thus presents the following questions.

1. ONCE the trial court WAS Alerted of what could lead to A conflict of interest, did the Court then fail in it's duty to inquire into whether trial counsel criminal charges might CAUSE A potential, Actual, OR Any other type of conflict of interest at all?
2. Were Mr. Casey's Constitutional rights Violated by signing the Waiver of Conflict-free Counsel without the participation of the Court?
3. Did the trial Court Err by Not Admonishing Mr. Casey "On the record" About the potential dangers of proceeding with Counsel under the ONUS of a potential conflict of interest?

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

Ex Parte DERCK LEE CASEY JR., Applicant Nos. WR-90,442-01 & WR-90,442-02

CASEY V. STATE, NO. 11-17-00138-CR (TEX. APP. EASTLAND DEC. 14 2017)

(Not designated for Publication).

IN THE 350th District Court of Taylor County TEXAS

TRIAL COURT CAUSE NO. 12,110-A & 12,111-B

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 State Trial court 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.

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 15, 2022.
A copy of that decision appears at Appendix A.

☐ 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

THE following statutory and constitutional provisions are involved in this case.

U.S. Const., Amend. VI

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.

U.S. Const., Amend. XIV

Section 1. All persons born or naturalized in the United States, And subject to the jurisdiction thereof, Are citizens of the United States And of the state wherein they reside. 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 process of law; Nor deny to any person within its jurisdiction the equal protection of the laws.

Writ of Habeas Corpus

Article 11.07. Procedure After Conviction Without Death Penalty

SEC. 1. This Article establishes the procedures for an application for writ of habeas corpus in which the applicant seeks relief from felony judgment imposing a penalty other than death.

SEC. 2. After indictment found in any felony case, other than a case in which the death penalty is imposed, and before conviction, the writ must be made returnable in the County where the offense has been committed.

SEC. 3. (A) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challenged was obtained, and the clerk shall assign the application to that court. When the application is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and forward a copy of the application by certified mail, return receipt requested, by secure electronic mail, or by personal service to the attorney representing the state in that court, who shall answer the application not later than the 15th day after the date the copy of the application is received. Matters alleged in the application not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the

State is Allowed to Answer, it shall be the duty of the Convicting Court to decide whether there are controverted, previously unresolved facts material to the legality of the Applicant's confinement. Confinement means confinement for any offense or any collateral consequence resulting from the conviction that is the basis of the instant habeas corpus. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the application, any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the Applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, additional forensic testing, and hearings, as well as using personal recollection. The state shall pay the cost of additional forensic testing ordered under this subsection, except that the Applicant shall pay the cost of the testing if the applicant retains counsel for purposes of filing an application under this article. The convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. On completion of the transcript, the reporter shall immediately transmit the transcript to the clerk of the convicting court. After the convicting court makes findings of fact

or Approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the court of the Criminal Appeals, under one cover, the Application, any answers filed, any motions filed, transcripts of all depositions and hearings; Any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

(e) For purposes of subsection (d), "additional forensic testing" does not include forensic DNA testing as provided for in chapter 64.

SEC. 4. (a) IF A subsequent application for writ of habeas corpus is filed after final disposition of an initial Application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that: (1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the Applicant ~~could not have reasonably~~ filed the previous application; or (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

(b) For purpose of subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by subsection (a)(1) if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

(c) For purposes of subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

SEC. 5. THE Court of Criminal Appeals may deny relief upon the findings and conclusions of the hearing judge without docketing the CAUSE, or may direct that the CAUSE be docketed And heard AS though originally presented to said court or as an appeal. Upon reviewing the record the court shall enter its judgement remanding the applicant to custody or ordering his release, AS the law and facts may justify.

The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

SEC. 6. Upon any hearing by a district judge by virtue of this Act, the Attorney for application, the state, shall be given at least seven full days' notice before such hearing is held.

SEC. 7. When the Attorney for the state files an answer, motion, or other pleadings relating to an application for a writ of habeas corpus or the court issues an order relating to an application for a writ of habeas corpus, the clerk of the court shall mail or deliver to the Applicant a copy of the answer, motion, pleading, or order.

STATEMENT OF THE CASE

Mr. Casey did an open plea of guilt to two counts of Aggravated Assault of a public servant stemming from a nighttime shooting in an Abilene Texas Alley. The officers were not hit, but returned fire and wound Mr. Casey.

Following the open plea of guilt the trial court ordered a presentence investigation report to be assessed at the punishment hearing. Both officers and Mr. Casey gave testimony at punishment. Punishment was then assessed at two 25 year sentences with a deadly weapon finding, in the 350th District Court of Taylor County in Abilene Texas. (Cause #12110-D and 12111-D)

Mr. Casey then fired trial counsel John Young and was court appointed Appellate Counsel Landon Thompson who filed a motion for new trial on the grounds of newly discovered evidence, ineffective assistance of counsel rendering plea involuntary. The motion was overruled without being heard. Appellate Counsel then filed notice of appeal.

Upon the advice of Appellate Counsel Mr. Casey then withdrew the appeal in the Eleventh Court of Appeal to pursue relief through 11.07 writ of habeas corpus.

Mr. Casey alleged, among other things that trial counsel's ineffectiveness caused him to plead guilty instead of going to trial. Casey relied on testimony within the reporter's record, copies obtained through the State Bar of Texas of counsel written response to the grievance that Casey filed immediately after sentencing, as well as other documents.

Trial court responded to Casey's application for writ of habeas corpus relief (Appendix 2(B)) finding no controverted, previously unresolved

STATEMENT OF THE CASE

facts material to the Applicant's confinement.

The trial court made supplemental findings regarding John Young's habeas affidavit [APP.4(B)] AND made the following findings of facts: 2.(C) "Although there is hesitation to vouch for the credibility of ONE who WAS subsequently convicted of CRIMINAL violations and lost his license to practice, nothing in the instant case leads me to disbelieve the contents of Mr. Young's Affidavit."

Based on this finding the court of Criminal Appeal then granted relief [APP.3(A)] stating in the opinion "the police officers testified at the punishment hearing that they did not verbally identify themselves as police officers before Applicant shot at them." Young told Applicant that the file showed that the officer's "repeatedly" warn him that they were officers."

After the state filed a motion for rehearing the writ of Habeas Corpus was remanded for additional findings of facts and conclusions of law on the claims raised in Applicant's writ Application.

Based on the trial court's new findings and conclusions as well as the Court of Criminal Appeals independent review of the entire record the Court then denied relief. [APP.1(A)]

The trial court and the Court of Criminal Appeals used Mr. Casey's guilty plea as well as the on stand testimony of "suicide by cop" as a deciding factor to deny relief. The perjured testimony came at punishment in hopes of gaining leniency from the court and to mitigation punishment.

REASONS FOR GRANTING THE PETITION

I. THE Court of Criminal Appeals misapplication of the Prejudice Standard of "Strickland" warrants this Court's Attention.

Mr. CASEY Alleged several different claims of INEFFECTIVE ASSISTANCE OF counsel in his 11.07 writ of habeas corpus. IN the Court's per curiam order [SEE APP. 9(A)] it gave instructions for the trial court to make a determination "if trial counsel misadvised Mr. CASEY about whether the Police positively identified themselves" AND "whether that information was made known to Mr. CASEY before entering his guilty plea".

Both of these questions were answered in Trial Counsel's Affidavit where he plainly states that after his viewing of the discovery he conveyed to me that the police repeatedly warned me that they were Police officers AND based off that misrepresentation advised me that doing a guilty plea and accepted responsibility would cause the judge to show leniency.

THE Court of Criminal Appeals erred by misapplying the STRICKLAND v. WASHINGTON 466 U.S. 668, 104 S.Ct. 2052. NEVER THE LESS, the two part test of "strickland" is applicable to challenges to guilty pleas based on ineffective assistance of counsel. SEE ALSO Hill v. Lockhart 474 U.S. 52, 57 106 S.Ct. 366 (1985); Ex Parte Adams 707 S.W.2d 646, 649 TEX. Cr. (APP. 1986); Ex Parte Pool 738 S.W.2d 285, 286 (TEX. Cr. APP. 1987).

HAD trial counsel been functioning competently then he would have done his due diligence by personally interviewing the state's witnesses to verify whether or not they positively identified themselves which is the key element of being charged with Aggravated Assault on a Public Servant, the person must know that the person he is assaulting is a public servant. TEX. PENAL CODE § 22.02(b)(2)(B). Under that provision, an actor must know that his victim is a public servant.

Deficient performance ~~can~~ can be shown in the erroneous advice trial counsel gave

Reasons For Granting The Petition

Mr. Casey which resulted in a guilty plea followed by a false confession and the prejudice prong can be shown by the guilty plea itself.

This Court requires, in making the prejudice analysis under Strickland, that the reviewing court consider all of the evidence in the record, both that which was admitted at the trial and that which is developed at the post-conviction stage, Strickland v. Washington, 466 U.S. 668, 667-88 (1984); Rompilla v. Beard, 545 U.S. 374 (2005); Wiggins v. Smith, 539 U.S. 510 (2003); Terry v. Taylor, 529 U.S. 362 (2000).

In the ~~opinion~~ "ORDER" of the Court of Criminal Appeals (Appendix 9(A)) they stated that Applicant, "Mr. Casey," has alleged facts that, if true, might entitle him to relief quoting both "Strickland" and "Ex Parte Patterson, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999)."

The facts that Mr. Casey alleged were affirmed and verified by trial counsel's sworn affidavit. Also entered into the habeas record was a copy of trial counsel's John Young's written response to the grievance filed with the state bar of Texas by Mr. Casey, which mirrored Young's account of his reasons for employing the strategy to accept responsibility and hope to mitigate punishment. These two documents by trial counsel were done years apart but his account does not change in the regard of what information he conveyed to Mr. Casey which turned out to be false. In Young's affidavit he states that he advised Casey to plead guilty due to the overwhelming evidence that the

State would put on at trial. According to Young the overwhelming evidence was in the discovery as well as the police officers statements. It wasn't until punishment after guilty plea had been entered that one of the officers involved stated that they did not identify themselves.

"No ineffective assistance when in face of overwhelming evidence of guilt and after consulting with his client, counsel proceeded with strategy to concede guilt and focus on mitigation of punishment."
Florida v. Nixon 543 U.S. 175, 187 (2004)

The instant case is different because Mr. Casey was adamant from the beginning that he did not know the identity of the people in the alley before he shot.

Mr. Casey retained counsel at the rate of \$10,000 and paid an additional \$5,000 to prepare for trial. Had Casey ever intended to plead guilty then doing so with the court appointed counsel would've made more sense and cost him nothing. It was only due to counsel's advice that Casey changed his plea and account of what really happened that night.

"The duty to investigate exists regardless of the accused admissions or statements to the lawyer of facts constituting guilt or the accused's state desire to plead guilty"... (Rompilla v. Beard).
545 U.S. 374

The deficiency and prejudice was shown but overlooked by the Texas courts. This Court must grant certiorari.

Reasons for Granting the Petition

This Court held: "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not therefore raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." "He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standard set forth in"...

McMANN V. Richardson 397 U.S. 759, 90 S.Ct. 1441 (1974)

Which is why this instant case required this Court to set precedence pertaining to the types of erroneous advice given that triggers an involuntary plea analysis, and whether such misrepresentations by trial counsel undermines the integrity of all the proceeding there after.

Mr. Casey also request that this Court determine if errors committed and proven on the trial counsel are grave enough to overcome the false testimony given at the punishment hearing.

II. The trial court's failure to address Trial Counsel John Young's Potential Conflict is in conflict with other courts decisions.

Trial counsel's deficient performance may have been a result of being indicted on criminal charges at the time Mr. Casey was due to begin trial, which is when Young began

Reasons for Granting the Petition

persuading Mr. CASEY to just plead guilty.

Young was indicted on charges of "Money Laundering", Forgery and Fraud.

Other Courts that have ruled on Conflict of interest CASES ARE; ZUCK V. ALABAMA 588 F.2d 436 (5th Cir 1979); Curio 680 F.2d at 889; U.S. V. GARCIA 517 F.2d 272 (5th Cir 1975); Johnson v. Zerbst 304 U.S. at 464, 58 S.Ct at 1023.

This CASE is somewhat different because unlike most Conflict of interest CASES that tend to deal with Co-defendants being represented by the SAME Lawyer, Mr. CASEY WAS represented by an Attorney who was operating under the onus of A potential Conflict of interest and even went as far as having Mr. CASEY sign a WAIVER of Conflict-free Counsel without the participation of the Court.

The Courts decided on HALL V. U.S 371 F.3d 969 (7th Cir 2004)... "ON an ineffective Assistance claim based on Counsel's Conflict of interest, A defendant who pleaded guilty upon the advice of an Attorney with A conflict of interest is not required to ~~to demonstrate~~ demonstrate that he would have decided Against pleading guilty had he been represented by A Conflict free Attorney, NOR does such A defendant need to Establish that A conflict-free Attorney would have advised Against pleading guilty." [U.S.C.A. Const Amend. 6]

Reasons for Granting the Petition

These cases illustrate the fact that the reviewing courts of Texas are out of step with this court and other circuits in its consideration^{of} deficient performance and prejudice, as well as its determination of erroneous advice and the severity of damage caused to the integrity of the courts acceptance of the insuing guilty plea.

Certiorari should be granted
to correct this error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derek L. Casey Jr.

Date: 9/13/2022