

22-5724

1-15

No 1383973

IN RE

CHAD SMALL

IN THE

SUPREME COURT OF THE
UNITED STATES

EXTRAORDINARY WRIT
OF

HABEAS CORPUS

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME
COURT, COMES NOW, CHAD SMALL AND PURSUANT TO THE PROVISIONS
OF 28 U.S.C. § 1651 AND 28 U.S.C. § 1257 FILES A PETITION FOR AN
EXTRAORDINARY WRIT OF HABEAS CORPUS. 28 U.S.C. 2241 (c)(3)

CHAD SMALL #01942027

MICHAEL UNIT

2664 FM 2054

TENNESSEE COLONY, TEXAS 75886

FILED

AUG 02 2022

ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION FOR REVIEW

IN COMPLIANCE WITH RULE 14 (a)

- 1) WHETHER PETITIONER WAS DENIED HIS 6TH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL
- 2) WHETHER THE GUILTY PLEA WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTERED.

PARTIES TO PROCEEDING

IN COMPLIANCE WITH RULE (b)(1) AND RULE 12.6

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RELATED CASES

EX PARTE CHAD SMALL WR-92, 450-02 (TEX. CRIM. APP. 2022)

SMALL V STATE, 14-14-00654-CR, 2015 WL 3462659 (TEX. APP. 2015)

TABLE OF CONTENTS

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASONS FOR GRANTING THE WRIT

CONCLUSION

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

APPENDIX G

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

McMANN V RICHARDSON	397 U.S. 759 (1970)	10 of 13
PADILLA V KENTUCKY	559 U.S. 356 (2010)	10 of 13
LAFLER V COOPER	132 S.Ct. 1376 (2012)	10 of 13
STRICKLAND V WASHINGTON	466 U.S. 668 (1984)	10 of 13

STATUTES AND RULES

6TH AMENDMENT	10 of 13
28 U.S.C. 2241 (c)(3)	1-13
28 U.S.C. 2254 (d)(1)(2)	10 of 13
28 U.S.C. 2244 (d)(1)	7 of 13
28 U.S.C. § 1257 (a)	7 of 13
28 U.S.C. § 1651	7 of 13

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR EXTRAORDINARY WRIT

6-15

PETITIONER RESPECTFULLY PRAYS THAT EXTRAORDINARY WRIT ISSUE
TO REVIEW THE JUDGMENT BELOW.

OPINIONS BELOW

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APPEARS AT APPENDIX A TO THE PETITION AND IS UNPUBLISHED.

THE OPINION OF THE 263RD DISTRICT COURT HARRIS COUNTY, TX
APPEARS AT APPENDIX B TO THE PETITION AND IS UNPUBLISHED.

THE MEMORANDUM OPINION OF THE FOURTEENTH COURT OF APPEALS APPEARS
AT APPENDIX C TO THE PETITION AND IS UNPUBLISHED

JURISDICTION

FOR CASES FROM STATE COURTS:

THE DATE ON WHICH THE HIGHEST STATE COURT DECIDED MY CASE WAS APRIL 27, 2022. A COPY OF THAT DECISION APPEARS AT APPENDIX A

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257 (a) AND 28 U.S.C. § 1651.

REASONS FOR NOT SEEKING RELIEF IN ANY OTHER STATE OR FEDERAL COURT AT THIS TIME IS DUE TO THE FACT NO RELIEF IS AVAILABLE BECAUSE OF THE PROCEDURAL POSTURE PETITIONER IS CURRENTLY IN. THE STRINGENT STANDARDS OF 28 U.S.C. 2244(d)(1) CANNOT BE MET BY ANY FILINGS THE PETITIONER MAY ATTEMPT. THE SUPREME COURT IS PETITIONERS' LAST AND ONLY RESORT UNDER THE CIRCUMSTANCES.

CONSTITUTIONAL AND STATUTORY PROVISIONS

6TH AMENDMENT TO THE UNITED STATES CONSTITUTION

28 U.S.C. 2241 (c)(3)

28 U.S.C. 2244 (d)(1)

28 U.S.C. 2254 (d)(1)(2)

28 U.S.C. § 1257

28 U.S.C. § 1651

STATEMENT OF THE CASE

ATTORNEY ROBERT SCOTT INFORMED PETITIONER THAT PROBATION WAS MORE THAN A MERE POSSIBILITY IN EXCHANGE FOR A PLEA OF GUILTY, I.E., OPEN PLEA OF GUILTY. ADDITIONALLY, THE STATE WAS OFFERING A TEN YEAR PRISON TERM AS A PLEA BARGAIN AGREEMENT. HOWEVER, ATTORNEY ROBERT SCOTT NEVER INFORMED THE PETITIONER OF THE TEN YEAR OFFER OR THE CASE "RESET" FORM WHICH CONTAINED THE TEN YEAR OFFER.

THE PETITIONER FILED AN DIRECT APPEAL IN THE 14TH COURT OF APPEALS WHICH WAS DISMISSED ON MAY 28, 2015. SEE OPINION AT APPENDIX C TO THE PETITION.

POST CONVICTION WRIT OF HABEAS CORPUS UNDER ART.11.07 TEX. CODE CRIM. PROC. THE OPINION OF THE 263RD DISTRICT COURT OF HARRIS COUNTY, TEXAS APPEARS AT APPENDIX B TO THE PETITION.

THE TEXAS COURT OF CRIMINAL APPEALS DENIED STATE POST CONVICTION RELIEF ON APRIL 27, 2022. COURT ORDER APPEARS AT APPENDIX A TO THE PETITION.

THE 263RD DISTRICT COURT ABATEMENT HEARING RECORD APPEARS AT APPENDIX D TO THE APPENDIX.

THE "CASE RESET" FORM DATED APRIL 2, 2014 (APPENDIX G) WAS NEVER ADDRESSED IN STATE POST-CONVICTION PROCEEDINGS AND HAS ALWAYS BEEN THE CORE BASIS OF THE 6TH AMENDMENT INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

THE STATE INCORRECTLY RELIED UPON A "CASE RESET FORM" DATED MARCH 4, 2014 (APPENDIX-B) TO SUPPORT IT'S FACTUAL FINDINGS, CONCLUSIONS AND RECOMMENDATIONS.

REASONS FOR GRANTING THE PETITION

"DURING PLEA NEGOTIATIONS, A DEFENDANT IS ENTITLED TO THE ASSISTANCE OF COMPETENT COUNSEL". McMANN V RICHARDSON, 397 U.S. 759, 90 S. CT. 1441 (1970)

"THE NEGOTIATION OF A PLEA BARGAIN IS A CRITICAL PHASE OF LITIGATION FOR THE PURPOSES OF THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL."

"AFFIRMATIVE MISADVICE BY AN ATTORNEY AND A FAILURE TO ADVISE ABOUT THE ADVANTAGES AND DISADVANTAGES OF A GUILTY PLEA ARE TREATED THE SAME WHEN ASSESSING WHETHER COUNSEL'S PERFORMANCE WAS DEFICIENT". PADILLA V KENTUCKY, 559 U.S. 356, 130 S. CT. 1473 (2010)

"A DEFENDANT'S RIGHT TO COUNSEL EXTENDS TO THE PLEA BARGAINING PROCESS", LAFLER V COOPER 132 S. CT. 1376 (2012) CITING STRICKLAND V WASHINGTON 466 U.S. 668 (1984).

DESPITE SUPREME COURT DECISIONS ON INDISTINGUISHABLE SET OF FACTS IN McMANN, PADILLA AND LAFLER, DEFENSE COUNSEL ROBERT SCOTT SURVIVED SIXTH AMENDMENT SCRUTINY IN THE TEXAS POST CONVICTION PROCESSES.

THE STATE COURT DECISION IS "CONTRARY" TO LAFLER, PADILLA, McMANN AND STRICKLAND. AND AN UNREASONABLE APPLICATION OF THE SAME. 28 U.S.C. 2254 (d)(1)(2)

TYPE OF RELIEF SOUGHT

11-15

PURSUANT TO SUPREME COURT RULE 20, THE PETITIONER SEEK THE ISSUANCE OF A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 (c) (3) AND 2242.

EXHAUSTION OF STATE REMEDIES

THE CONSTITUTIONAL ISSUES PRESENTED HEREIN HAVE BEEN PRESENTED TO THE HIGHEST COURT OF THE STATE OF TEXAS BY WAY OF A POST-CONVICTION WRIT OF HABEAS CORPUS UNDER ART. 11.07 TEX. CODE OF CRIMINAL PROCEDURE TO THE TEXAS COURT OF CRIMINAL APPEALS, SEE TEXAS COURT OF CRIMINAL APPEALS' FINAL JUDGMENT ON WRIT NO. WR-92,450-02 DATED APRIL 27, 2022 (AT APPENDIX A).

28 U.S.C. 2242

THE REASONS FOR NOT MAKING APPLICATION TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION, THE DISTRICT IN WHICH THE CONVICTION AND SENTENCE WAS IMPOSED AND OF WHICH THE PETITIONER IS HELD, IS BECAUSE THE PROCEDURAL POSTURE OF THIS CASE SO REQUIRE STRICT COMPLIANCE WITH 28 U.S.C. 2244(d)(1) STATUTE OF LIMITATIONS A RULE REQUIREMENT, THE PETITIONER CANNOT SATISFY AT THIS POINT IN TIME. THEREFORE, ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM.

SUPREME COURT RULE 20.4.

THIS WRIT WOULD BE IN AID OF THIS COURT'S APPELLATE JURISDICTION BECAUSE THE FUNDAMENTAL NATURE OF THE GUILTY PLEA PROCESS COULD ONLY BECOME RE-AFFIRMED BY THE U.S. SUPREME COURT.

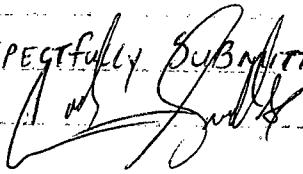
EXCEPTIONAL CIRCUMSTANCES WARRANT THE AID-EXERCISE OF THIS COURT'S JURISDICTION BECAUSE A FUNDAMENTAL MISCARRIAGE OF JUSTICE WOULD OCCUR IN THIS CASE WITHOUT THE EXERCISE OF THIS COURT'S JURISDICTION.

ADEQUATE RELIEF CANNOT BE OBTAINED IN THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION DUE TO THE PROCEDURAL POSTURE OF THIS CASE UNDER 28 U.S.C. 2244(d)(1). FOR THE SAME REASONS, NO TYPE OF RELIEF IS AVAILABLE IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

13-15

CONCLUSION

THE PETITION FOR EXTRAORDINARY WRIT SHOULD BE GRANTED.
I.E., WRIT OF HABEAS CORPUS. 28 U.S.C. 2241 (c)(3) RULE 20

RESPECTFULLY SUBMITTED,


DATE: August 8, 2022