

AUG 21 2022

OFFICE OF THE CLERK

No.

22-5785

IN THE
SUPREME COURT OF THE UNITED STATES

Robert Alan Fratta - Petitioner

v.

The State of Texas - Respondent

On Petition for a Writ of Certiorari to
the Texas Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

Robert Alan Fratta

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ORIGINAL

QUESTIONS PRESENTED

*** CAPITAL CASE ***

(Execution date for January 10th pending)

- 1) IN LIGHT OF THE SHINN v. MARTINEZ RAMIREZ RULING, ARE STATE COURTS NOW REQUIRED TO ACCEPT AND RULE ON THE MERITS OF CLAIMS PRESENTED IN WRITS OF HABEAS CORPUS BY PRISONERS WHO LAWFULLY DISMISS THEIR ATTORNEYS TO BE IN COMPLIANCE WITH STATE PROCEDURES AND FILE THE CLAIMS PRO SE BECAUSE THE ATTORNEYS NEGLECTED OR REFUSED TO?

- 2) CAN UNINDICTED ACTORS BE ADDED INTO AN ACCUSED'S JURY CHARGE WHEN HIS INDICTMENT CHARGES HIM AS THE ONLY ACTOR TO COMMIT THE OFFENSE?

- 3) IS IT UNCONSTITUTIONAL FOR A GRAND JURY TO SIGN OFF ON AN INDICTMENT WHEN THE ELEMENTS OF THE OFFENSE SOUGHT ARE NOT SATISFIED and/or COULD NOT HAVE BEEN SATISFIED BY THE GOVERNMENT TO BEGIN WITH?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Fratta v. Lumpkin, No. 22-_____, filed in this Court on 7/28/22.

Fratta v. Texas, No. 21-6434, denied by this Court without review.*

Fratta v. Lumpkin, No. 21-70001, 2022 WL 44576 in the 5th Circuit.

Ex parte Fratta, No. WR-31,536-05 (Tex. Crim. App. 6/30/21).

***NOTE:** On 6/27/22 at 11:09am this Court picked up Fratta's timely refiled Petition for Rehearing from the 20543 D.C. Post Office (See Certified Mail #7020 3160 0000 9187 4011), yet as of this writing - it still has not been docketed or ruled on.

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IN THE
SUPREME COURT OF THE UNITED STATES

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from State Courts:

The Opinion of the Texas Court of Criminal Appeals from 5/25/22 appears at Appendix A to the petition and is unpublished.

JURISDICTION

For cases from State Courts:

The date on which the highest State court decided Petitioner's case was 5/25/22. A copy of that decision appears at Appendix A.

No petition for rehearing was filed.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(RELEVANT PARTS)

5th Amendment: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on...indictment of a grand jury"

6th Amendment: "In all criminal prosecutions, the accused shall enjoy the right to...be informed of the nature and cause of the accusation"

14th & 5th Amendments: "No person shall be deprived [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]."

28 U.S.C. § 2254(e)(2): "If **the applicant** has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing..." (Emphasis mine).

Texas Penal Codes 7.01 & 7.02 ("law of parties"): "Quoting these statutes is irrelevant because it's not the legislative wordings this petition is concerned with, but rather how the government and courts have been applying a law of parties (or aiding and abetting) to jury charges in an unconstitutional manner.

Texas Penal Code 15.03 (Criminal Solicitation): "(a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission."

Texas Penal Code 19.03 (Capital Murder): "(a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) and:...(2) the person intentionally commits the murder in the course of committing or attempting to commit...burglary...(3) the person...employs another to commit the murder for remuneration or the promise of remuneration;" (Emphasis mine).

STATEMENT OF THE CASE

Petitioner Robert Alan Fratta ("Fratta") was indicted for capital murder in 4 counts, all of which charge Fratta with being at the scene and shooting and killing his wife. The first 3 counts charge one other actor as an accomplice. The 4th count charges Fratta as the ONLY actor to commit the murder while also committing burglary. (See Appendix C). During the grand jury, the State coerced the jurors to sign off on all 4 counts even tho they TOLD the jurors Fratta was NOT at the scene, did NOT shoot and kill anyone, and did NOT commit burglary. No "law of parties" wording is used in the indictment and can't be because it's not any chargeable offense. Prior to trial, Fratta complained to his court appointed attorneys that such an indictment is unconstitutional because the State knew upfront by their own evidence that the essential elements of capital murder could not possibly be met to have indicted Fratta, but the attorneys took no action on it. Fratta also argued vehemently to his attorneys that no law of parties could be added to the 4th indictment count since he was charged as the only actor and no unindicted actors can be added into a jury charge. Again they ignored Fratta's insistences to argue the violations of Notice, Due Process, and State laws, and Fratta got convicted as a result.

In direct appeal, Fratta instructed his court appointed attorney to file such claims and make sure to argue the evidence was legally insufficient, especially because the Texas Court of Criminal Appeals ("TCCA") would have to omit that unconstitutional (and unlawful) law of parties addition to the 4th count and rule Fratta acquitted of all charges. But again Fratta's attorney ignored his insistences, so Fratta had to file numerous complaints

of ineffective assistance of counsel to the TCCA, - to no avail. Fratta then requested to file his legal insufficiency and related claims as pro se, but the TCCA denied his motion. Forced to file the insufficiency, material variance, and constitutional violations in the interest of justice (and exhaustion), Fratta submitted 2 pro se briefs. (See TCCA No. Ap-76,188, or S.Ct. No. 18-6298 Appendix G). In its Opinion denying Fratta's attorney's brief, the TCCA duly noted Fratta's pro se filings, but immediately thereafter stated: "Fratta does NOT challenge the sufficiency of the evidence of guilt." (Emphasis mine). And conducted NO sufficiency analysis on its own accord. (See Opinion page 2, or S.Ct. 18-6298 Appendix D page 2).

In State habeas (post conviction), Fratta again instructed his court appointed attorney to raise all the claims raised in his pro se briefs, and especially the legal insufficiency under a Jackson analysis, but again got ignored. Instead, that attorney filed a writ raising only 4 issues; 3 punishment phase, and 1 generic voir dire. Fratta then filed complaints to the trial court and TCCA to get the attorney's writ ruled a non-application for not even raising any innocence-guilt phase claims - as it's required to "attack the conviction" and "throw in the kitchen sink" under Texas laws. But again those filings got ignored. So Fratta then went thru GREAT hardship to get that attorney dismissed and be designated fully pro se in compliance with State procedures so he could file the proposed findings of fact and conclusions of law, plus subsequent writs and other filings allowed. But all of Fratta's lawful pleadings got denied without reviewing or ruling on the merits of the claims presented. (See trial court records under No. 1195044 and TCCA No. AP-76,188 and WR-31,536-04 and 05, or S.Ct. 18-6298 Appendix H).

In federal habeas, Fratta once again instructed the court appointed attorney to file all the claims Fratta had been filing pro se. Initially his attorney didn't. But after Fratta threatened complaints to the State Bar,

the attorney vaguely did, but not at all effectively or like Fratta had argued. (See U.S. Southern District No. 4:13-cv-3438 Dockets 15 & 51). Fratta again had to file supplements and complaints, but got denied and ignored. (See Dockets 53, 68 & 78, or S.Ct. 18-6298 Appendix J Exhibits 1-3). That federal judge denied the attorney's writ and upheld Fratta's conviction specifically on that law of parties addition to the 4th indictment count. (See Docket 80, or S.Ct. 18-6298 Appendix B). Fratta then timely filed a Rule 59(e) motion - again citing the issues, but the judge struck it from the record in violation of this Court's ruling in *Banister v. Davis*, 140 S.Ct. 1698. (See Dockets 87, 88 & 90, or S.Ct. 18-6298 Appendix J Exhibit 4). A different judge took over and Fratta motioned for him to accept and rule on the 59(e), but he denied the motion. (Dockets 105 & 106). Fratta then filed the issues in Rule 60(b) motions, but again got denied and stricken. (Dockets 114-116, 118, 119, 123, 127-131, & 135). Fratta's newer (and current) appointed attorneys then filed a 60(b), but it too failed to effectively cite and argue the issues, and got denied. (Dockets 141, 144 & 145). The 5th Circuit upheld the denial and those attorneys and the DLA Piper firm filed a petition for writ of certiorari with this Court on 7/28/22 - for which a ruling will be pending, but the Questions raised do **not** deal with Fratta's issues herein.

Being fully pro se in State courts, Fratta had submitted a new writ of habeas corpus which again raised the Notice and Due Process violations and related issues in compliance with State procedures, and it got filed on 4/1/21. But on 6/30/21 the TCCA denied it as an abuse of writ **without** ruling on the merits of the issues, and never even mailed Fratta a copy or notified him of the denial in any manner. Fratta then had to file 2 motions for rehearing, but no ruling was made on either. Fratta then filed a petition for writ of certiorari to this Court, but it was denied without review. See No. 21-6434.

This Court then picked up Fratta's timely refiled petition for rehearing from the D.C. 20543 Post Office on 6/27/22 at 11:09am (See Certified Mail number 7020 3160 0000 9187 4011), but as of this writing - it still has **not** even been docketed or ruled on.

On 4/26/22 Fratta had another writ of habeas corpus filed in compliance with State procedures. (See Appendix B). But on 5/25/22 the TCCA again denied it "**without** considering the merits of the claims", and again never even had the decency to mail any copy of that Order to Fratta (See Appendix A).

Thus arises this petition for a writ of certiorari mailed/filed on 8/22/22 within 90 days of the 5/25/22 writ denial.

REASONS FOR GRANTING THE PETITION

FOR QUESTION #1: On 5/23/22 this Court ruled in Shinn v. Martinez Ramirez that: "2254(e)(2) applies whenever any STATE PRISONER failed to develop the factual basis of a claim"; that consistent with Keeney v. Tamayo-Reyes, "THE PRISONER must be 'at fault' for the undeveloped record in State court", and that: "under §2254(e)(2) A PRISONER is 'at fault' even when State post conviction counsel is negligent." Shinn clearly placed the onus on THE PRISONER to develop the record by filing his claims on his own accord - so long as his filings are: "in compliance with State procedures." Like many State prisoners, when Fratta realized his post conviction attorney was not only negligent and ineffective, but intentionally sabotaging him, he went thru great hardship to lawfully dismiss the attorney in order to make pro se filings: "in compliance with State procedures." Yet the State courts, particularly the TCCA, still ignored Fratta and/or refused and still refuse to rule on the merits of his fully meritorious claims. (See Appendix A). Fratta argues that Shinn now makes it mandatory for State courts to accept and rule on the merits of prisoners' pro se filings made in compliance with State procedures - like Fratta's. Fratta has an execution Order pending signing by the trial court judge for a January 10th execution. Unless this Court grants this Question for hearing, the trial judge **will** sign the Order during a hearing on October 11th for Fratta to be executed this January 10th.

FOR QUESTION #2: The government all too often manages to secure indictments for trumped up charges like capital murder by charging the accused as a sole actor even tho they know the evidence shows he was only a party and not the principal actor. Then after trial the government adds other actors into the jury charge under a law of parties (or aiding and abetting) wording. This

routine and common practice is unconstitutional. It violates Notice and Due Process. Plus anytime unindicted actors are added into a jury charge - it completely changes the elements of the offense the accused was indicted under, which again is unconstitutional. No unindicted actors can be added into a jury charge. All actors the government intends to tell the jurors about and have in the jury charge count(s) must first be charged in the indictment count(s) along with the accused in the proper manner to satisfy the elements of the offense. Then the jury charge must also be worded to satisfy the same elements of the offense. In Fratta's case at hand, he was convicted and upheld by the District Court and 5th Circuit on the 4th count of his indictment. In that count, he's charged as the only actor under Texas Penal Code ("PC") 19.03(a)(2). (See Appendix C). But then his jury charge added 2 other actors in a totally different scenario from the indictment, and does not even satisfy any of the elements of capital murder under PC 19.03. (See Appendix D). [NOTE: Even in Fratta's other indictment counts where the State also added a law of parties to the jury charge, it completely changed the elements of the offense from PC 19.03(a)(3) in the indictment, to the offense of criminal solicitation under PC 15.03(a) in the jury charge - which Fratta argues is unlawful and unconstitutional since that's a different and lesser offense than capital murder yet the government and judges still allowed Fratta to be convicted and upheld for the offense of capital murder and consider that jury charge wording to construe capital murder]. Fratta argues it's unconstitutional to add any other actors into a jury charge count where the accused is indicted as having acted alone in that count. Unless this Court grants this Question for hearing, Fratta's trial court judge will sign the already submitted Order for Fratta to be executed on January 10th.

FOR QUESTION #3: Fratta argues it's unconstitutional for the government to secure indictments for charges they know the evidence cannot satisfy the elements of, and, for a grand jury to sign off on an indictment after hearing evidence that does not satisfy the elements set out in the indictment. This goes on routinely in State and federal grand juries. In Fratta's case, the State presented a capital murder indictment to the grand jury that had 4 counts. All 4 counts say Fratta was at the scene and shot and killed his wife himself - which fully satisfies the elements set out for capital murder under PC 19.03(a)(2) and (a)(3). Therefore the indictment itself is facially complete. (See Appendix C). However, it was ALL an INTENTIONAL LIE. The State KNEW Fratta did NOT meet ANY of the elements of those 4 counts, and even told the grand jurors Fratta wasn't at the scene when the charged offense occurred, and didn't shoot and kill anyone. Yet somehow the State still got the grand jury to sign off on all 4 counts. In Texas, prosecutors apparently tell the grand jury not to worry that the elements are not met for the indictment because they INTEND to CHANGE EVERYTHING in a jury charge AFTER the trial via adding a law of parties wording. Such practice is not only prosecutorial misconduct, but unconstitutional all around between them, the grand jurors, and the judge who allowed it all. The law of parties is not any chargeable offense and therefore cannot be pled in an indictment. But in order to be indicted for any chargeable offense, the elements of THAT offense must be satisfied to a grand jury first. Altho Fratta is completely innocent and had nothing to do with his wife's death, the State's theory is that Fratta promised to pay someone else to kill his wife. By that theory and evidence presented to the grand jury, the only chargeable offense's elements to have been satisfied enough to sign an indictment would have been criminal solicitation of capital murder under PC 15.03, and that's a LESSER offense than

capital murder and not eligible for the death penalty. The government COERCES grand juries to sign off on HIGHER offenses than what elements can actually be satisfied enough for indictment. Fratta requests this Court to step in and rule this common practice unconstitutional and a federal criminal offense for prosecutors, grand jurists and presiding judges to commit and allow such acts. Unless this Court grants this Question for hearing, Fratta will be assigned the impending execution date for January 10th.

CONCLUSION

This petition for a writ of certiorari should be granted, not only in the interest of justice, but also so Fratta is not executed on January 10th of 2023.

Respectfully submitted,



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Signed: 8/20/22

Mailed/Filed: 8/22/22