

No. 22-5785 & 22A486

IN THE
SUPREME COURT OF THE UNITED STATES

Robert Alan Fratta - Petitioner

v.

The State of Texas - Respondent

REPLY BRIEF

CAPITAL CASE

(Execution set for January 10th, 2023)

Robert Alan Fratta

Polunsky Unit, #999189

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Livingston, TX 77351

Comes now Petitioner Robert Alan Fratta to file this Reply Brief to the Respondent's Brief in Opposition ("BIO"). Rule 15.6 allows for such replies to address new points raised in a BIO. The State's BIO raised numerous new points in order to intentionally steer this Court away from the points Fratta raised in his petition. Additionally the BIO is rife with inaccuracies and flat out untruths starting with the wording of the Questions presented and their Statement of the Case. But Fratta will try to get to key points herein.

1. Fratta starts with his first Question regarding Shinn. BIO p.19 claims Fratta "never properly dismissed his attorneys." Yes he did. He was brought to the trial court for a hearing on 8/22/13 specifically to give testimony along with his attorney Patrick McCann and Assistant D.A. Roe Wilson to dismiss McCann and proceed as pro se only. Judge Brad Hart DID grant Fratta's motion to dismiss McCann and proceed as fully pro se. See Court records as proof. From that point onward to the dismissal of Fratta's subsequent State writ at issue, Fratta has made it clear within his filings that he is officially pro se and therefore should have his filings accepted under State procedures that he painstakingly followed in order to have his pleadings heard. Being dismissed without reviewing the merits of the claims from 8/22/13 onward to present - violated Fratta's Constitutional Right to be heard in habeas corpus appeal. The Shinn ruling confirms this point and must now be applied to the dismissal due to the fact that Fratta most certainly did satisfy the Constitutional aspect of Texas CCP Article 11.071 Section 5(a)(2) the BIO refers to on page 16. (See Petition Appendix B).

2. By the State arguing Shinn should not be addressed now by this Court only gives reason for this Court to grant Fratta's application for a stay because he'll have to file another subsequent writ to the TCCA to argue this Shinn matter. Fratta's execution date is January 10th, 2023.

3. On BIO pages 15 and 20-22, their argument is that "Fratta's second claim was already reviewed and rejected by the federal courts." No. Fratta's 2nd Question's issues have **never** been addressed by the federal courts in any of his attorneys' filings or his pro se filings. In fact **NO COURT** (State, federal or this Court) has ever ruled on Fratta's 2nd Question issue, which is why the State did not and can not cite any such cases. Fratta's attorneys did not argue that Notice and Due Process are violated whenever unindicted actors are added to a jury charge when a person is indicted as a sole actor. And as you can see from their quotes therein, there was no ruling made regarding Notice and Due Process not being violated by such addition. This is a Question this Court must answer for the first time ever. The State does not want this Question answered by this Court because the result could end up reversing a lot of law of parties convictions where the accused was indicted as a sole actor - such as in Fratta's case in his 4th count.


4. BIO pages 22-25 raise an entirely new point of sufficiency of the evidence in their argument against Question 3, and it's all a moot point. If this Court will read Fratta's petition It will see Fratta made **no** argument of the trial sufficiency of the evidence. Fratta's argument deals solely with what evidence needs to be presented to a **grand jury only** - in order to even secure a Constitutionally authorized **indictment**. In other words, Fratta's issue is about the **indictment process**. Not anything about trial sufficiency.

5. Regarding the State's opposition for this Court to issue a stay, BIO p.25 quotes 4 prongs of Nken v. Holder for this Court to consider. This is a new point for Fratta to address, and will do so with each prong: (1) the stay application made extremely strong showing to succeed on the merits therein. Plus as pointed out in number 2 above, if this petition is denied, the State said Fratta must raise the Shinn Question in yet another subsequent writ which

would take well into March to resolve. That gives even further merit for this Court to grant a stay even if this petition is denied. (2) Absent a stay, Applicant will of course be irreparably injured by being killed by the State of Texas, and in violation of Due Process and cruel and unusual punishment; especially since **the drugs** the State intends to use on Fratta **are EXPIRED**. Fratta is filing an inhouse TDCJ grievance on the expired drugs issue too. (3) Other interested parties will **not** be substantially injured in the issuance of a stay; unless they are inherently evil and therefore against justice and morality. (4) The public interest should lie in justice, especially in a death penalty case where all meritorious claims need to be addressed **before** the ultimate punishment is administered to any person. Fratta has never received his due justice regarding his innocence and meritorious claims any court has ever ruled on to date, and no attorney has yet filed for him.

In closing, this Court does have jurisdiction to **grant** all 3 Questions presented in Fratta's petition, and should do so in the interest of justice for Fratta and the public at large.

According to Docket 22A486, Justice Alito was presented with Fratta's application for a stay of execution on 11/4/22. (**Over 5 weeks ago**). Fratta has never known such an application to go unruléd on for so long and feels such prolonging is unjust and adding great stress to him during this already difficult time of the emotional Christmas season. Fratta hereby requests an **immediate granting** of his application for a stay while It decides how to rule on the petition at hand.

Respectfully submitted, Robert Alan Fratta

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Mailed/Filed: 12/12/22