22-6182

NO. 22-A-307

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

STACY L. CONNER,
petitioner,

VS.

BOBBY LUMPKIN, Director, TDCj-CID,
KEN PAXTON, Texas Attorney General,
respondent(s).

On Petition for Writ of Certiorari to
the U.S. Court of Appeals 5th Circuit, NO. 21-10922
and USDC, Lubbock Division, Case NO. 5:18-CV-175(H).

PETITION FOR WRIT OF CERTIORARI

STACY L. CONNER
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Livingston, Tx. 77351-0000

Pro Se Petitioner

QUESTION(S) PRESENTED

1.) An important Question in the Administration of Justice, which has the potential to effect a large number of american citizens, is: "Does the U.S. Supreme Court view [i]t [habeas corpus] as a static, narrow, formalistic remedy; or has its scope grown to achieve its grand purpose - - the protection of individurals against erosion of their Right to be free from wrongful restraints upon their liberty? and if so, on what boundry is such 'restraints and liberty' defined?"

2.) Is there any evidence within the lower U.S. District Court's conclusion to Conner's §2254 that suggest an apparent abuse of discretion which prevented Conner from receiving a fair-unbiased judgment?

3.) This next Question is an exact duplicate to what was the sole basis of Conner's State & Federal Habeas Corpus Pleadings; neither court ever gave answer to this crucial Constitutional Claim (verbatim): "After assessing all the Facts and supporting evidence in correlation to precedent and the many statutory LAWS which govern the issue [in this Court's opinion] was Conner's Petition for Discretionary Review timely delivered; Yes or No?"

4.) Was the 5th Circuit Court of Appeals' decision to deny Conner a COA in keeping with 28 U.S.C. §2254(c)(2) and the many binding precedents established by this Supreme Court of the United States?

LIST OF PARTIES

[x] 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

- Conner v. State, No. PD-1304-09, Tx. C. Crim. App. judgment entered wednesday, March 17, 2010.
- Conner v. TCCA, No. 1:10-CV-816, U.S. District Court for the Eastern Dist. of Tx. Beaumont Div. Judgment entered - July 25, 2011.
- Conner v. TCCA, No. 11-40946, U.S. Ct. App. 5th Cir. Judgment entered March 8, 2012.
- Conner v. State, No. 13-0102, Tx. Sup. Ct. Judgment entered 4/19/2013, no opinion on the merits.
- Conner v. State, No. WR-25,823-02; TCCA Judgment entered 10/16/2015 no opinion on the merits.
- Conner v. State, No. 16-6030, U.S. S.Ct. Judgment entered 11/28/2016, no opinion on the merits.
- Conner v. TDCj, No. WR-25,823-03; TCCA Judgment entered 8/21/2017, no opinion on the merits.
- Conner v. TDCj, No. 5:18-CV-175(H), USDC Northern Dist. of Tx. Lubbock Division. Judgment entered 7/27/2021.

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OTHER

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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A-1 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix A-2 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits 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 _____ 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

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 5/23/2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 7/19/2022, and a copy of the order denying rehearing appears at Appendix A-2.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including 11/28/2022 due (date) on 10/13/2022 issue (date) in Application No. 22 A 307. See Appendix A-3.

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 _____. A copy of that decision appears at Appendix _____.

[ ] 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

Throughout this petition arises the Protected Clauses of the United States Constitution, along with the "Bill of Rights" adopted in 1791, incorporating not only the 1st, 4th, 5th, and 6th Admendments, but specifically the 14th Amendment that Guarantees "due process of law". Conner, presents herein a convincing 'denial-of-access-to-the-courts claim' as you [the U.S. Supreme Court] defined it in Chambers v. Baltimore & Ohio Railroad, 207 U.S. 142, 28 S.Ct. 34, 52 L. Ed. 142 (1907); echoed and sharpened later by the 5th Cir. with Ryland v. Shapiro, 708 F. 2d 967 (1983). Conner's denial-of-access-to-the-court's claim derives from a ruling by the Texas Court of Criminal Appeals which fails to recognize and abide any of their own state statutes that dictate the requirements of a timely filed legal document:

1. Texas Rules of Civil Procedure, Rule 5,
2. Texas Rules of Appellate Procedure, Rule 9.2,
3. Texas Code of Criminal Procedure, 45.0013.

Plus, ignores ALL related precedents associated with the "Mailbox Rule" established by the Supreme Court in Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988).

But, the most poignant ordinances having an impact upon this petition [and is of grave public interest] comes straight out of Federal Criminal Code and Rules, Thomas Reuters 2022 Edition, starting on pg. 211-214; or Federal Civil Judicial Procedures and Rules, Thomas Reuters 2022 Edition, at 307-310 - - both deal extensively with the broad concept that covers the many usages of 28 U.S.C. §2254 [The Great Writ] which happens to be in stark conflict with the restrictive opinion by the 5th Cir.

STATEMENT OF THE CASE

Conner's case is unique & unusual, involving some extraordinary circumstances as a whole. The end result, at this point [the 'Ordered Judgment' by the 5th Circuit] unquestionably challenges the clear-plain language of not only our Law Books on the shelves, but is also in strong contradiction with binding precedents set by this Supreme Court of the United States. WHICH CAN NOT HELP BUT HAVE A HUGE EFFECT ON THE GENERAL PUBLIC AT LARGE.

This case originates from the last stage of the state's appellate process. Wherein Conner had/has a distinct liberty interest invested in the final outcome; and the TCCA 'dismissed as untimely' Conner's (PDR) petition for discretionary review.

'Dismissed as Untimely' was/is in direct opposition to every state procedural rule (or statute of law) that deals with a timely filed legal document, and denigrates in its entirety "The Mailbox Rule" enacted by the Supreme Court. This theory is galvanized into an irrefutable FACT based in part on evidence introduced by the Tex. C. Crim. App. (themselves). The TCCA's action, while Conner is in actual physical custody equates to a deliberate restraint upon his liberty to due process. Conner, contends that any true--trier of the FACTS would be hard-pressed to find a more flagrant or convincing 'denial-of-access-to-the-court's claim' than this one here.

But, it's in Conner's long & grueling jounrney trying to obtain those Protected Rights that his case has morphed into something far more providential in substance. Those issues are quite significant to this petition, and will be revealed & discussed in the next and final segment to this entreaty.

REASONS FOR GRANTING THE PETITION

First Question Presented

> 1.) An important question in the Administration of Justice, which has the potential to effect a large number of american citizens, is: "Does the U.S. Supreme Court view [i]t [habeas corpus] as a static, narrow, formalistic remedy; or has its scope grown to achieve its grand purpose - - the protection of individuals against erosion of their Right to be free from wrongful restraints upon their liberty? and if so, on what boundary is such 'restraint & liberty' defined?"

Regrettably, Conner admits he can not take credit for the actual basis of the eloquence in prose utilized within the above presented question. Conner plagiarized the substance of the wording in that question right out of the federal law books, who (themselves) but cite precedent established by this very Supreme Court of these United States . . . as he will explain:

I.

Not for one moment should it be viewed or thought that Conner has, in any way, been lackadaisical in his obligations to bring these matters before any number of tribunals for proper resolution. He has been industrious in his many attempts to present his due process violation of denial-of-access-to-court claim for review. An issue that Conner has a distinct liberty interest in.

He has traveled up & down the full spectrum of possible avenues in his search for relief. Only to receive (for the most part) a rubber stamping in return for his due diligence.

After receiving just such a response (back in 2017, a white-carded 'Denied') from the state's highest court on his 11.07 habeas corpus pleading, Conner turned to the law books in his fight for Freedom!

As an indigent Pro Se litigant, a layperson unschooled nor taught in law, Conner was/is forced by circumstance to shoulder the full burden of his own representation. In that regard Conner invites the Supreme Court to travel back with him (in time) to the moment that Texas (again) 'denied' him access-to-court . . . which is Still (even now) on-Going. Lets, together, turn to the Law Books (the Rules) that define the usage of §2254 habeas corpus cases. Beginning with either the Federal Criminal Code and Rules, Thomas Reuters 2022 Edition, pg. 212; or Federal Civil Judicial Procedures and Rules, Thomas Reuters 2022 Edition, pg. 308; both clearly outline (in pertinent part):

Rule 1. Scope

(b) Other Cases. The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a).

(As amended Apr. 26, 2004, eff. Dec. 1, 2004.)

Advisory Committee Notes
1976 Adption

[respectfully pg(s). 213 & 309 (verbatim)]

The courts are not unaminous in dealing with the above situations, and the boundaries of costody remain somewhat unclear. In Morgan v. Thomas, 321 F. Supp. 565 (S.D. Miss. 1970), the court noted:

> It is axiomatic that actual physical custody or restraint is not required to confer habeas jurisdiction. Rather, the term is synonymous with restraint of liberty. The real question

is how much restraint of one's liberty is necessary before the Right, to apply for the writ comes into play. * * *
It is clear however , that something more than moral restraint is necessary to make a case for habeas corpus.

321 F. Supp. at 573

Hammond v. Lenfest, 398 F. 2d 705 (2d Cir. 1968), reviewed prior "custody" doctrine and reaffirmed a generalized flexible approach to the issue. In speaking about 28 U.S.C. §2241, the first section in the habeas corpus statutes, the court said:
While the language of the Act indicates that a writ of habeas corpus is appropriate only when a petitioner is "in custody" * * * the Act "does not attempt to mark the boundaries of 'custody' nor in any way other than by use of that word attempt to limit the situations in which the writ can be used". * * * And, resent Supreme Court decisions have made clear that "[i]t [habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose - - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty".
* * * [B]esides physical imprisonment, there are other resraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus".

398 F. 2d at 710-711

There is, as of now, no final list of situations which are appropriate for habeas corpus relief. It is not the intent of the rules or notes to define or limit "custody". (unquote)!!

[respectfully pg(s). 214 & 310, in pertinent part]

Rule 2. The Petition

Subdivision (b)(4) The applicant is in jail, prison, or other actual physical restraint but is attacking a state action which will cause him to be kept in custody in the future rather than the Government action under which he is presently confined. The named respondents shall be the state or federal officer who has official custody of him at the time the petition is filed and the attorney general of the state whose action subjects the petitioner to future custody.

While typing-up the last couple of pages (The Rules of Law) on an o'lhand-me-down prison typewriter, Conner is somewhat reminiscent (even amazed) at how the words seem to jump right off the paper at him in its clear-plain meaning that mirrors PRECISELY his exact situation. Directly out out of the federal Law Books, into

the pages of this petition. The overall message (in concise-English) is every-bit as convincing to him today as it was back in 2017:

> that "[i]t [habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose - - the protection of individuals against erosion of their Right to be free from wrongful restraints upon their liberty."

On the very same pages of these 'Rules of Law' are a long list of cases (as examples) where habeas corpus has been utilized for purposes other than an actual attack on a sentence or conviction; or where actual "custody" was redefined. To shepardize any one of those examples is like opening a can of worms, and uncovers a whole treasure-trove of more cases. Chiseling into Granite that other courts (including the Supreme Court of the United States) have recognized the Full-range of habeas corpus power. Clearly, it's not meant to be a narrow-restrctive **device** or remedy.

Just to name a few interesting ones as fodder, or food for thought: Hammond v. Lenfest, 398 F. 2d 705 (2d Cir. 1968): Hammond, sought a discharge from the military service on the basis of being a conscientious objector.

> Id. at (706) "The question presented on an application for writ of habeas corpus is the present legality of the restraint of liberty to which a petitioner is subjected, not whether the restraint was appropriate or justified in the past."

Morgan v. Thomas, 321 F. Supp. 565 (1970); Discuss at length, whether the constitutional privilege against self-incrimination afforded under the 5th & 14th Amend. might be protected through habeas corpus.

> Id. at 574 * * * What matters is that they significantly restrain petitioner's liberty to do those things which in this country free men are entitled to do. Such restraints are enough to invoke the help of the "Great Writ" 371 U.S. at 240, 243; 83 S. Ct. at 376, 377.

Jones v. Cunningham, 371 U.S. 236, 239; 83 S. Ct. 373, 375; 9 L. Ed. 2d 285 (1963), held the "in custody" requirement to be satisfied by

an applicant who is on parole.

Marden v. Purdy, 409 F. 2d 784 (5th Cir. 1969) out of Florida; the 5th Cir. (although ultimately Denied the appeal) determined that Marden (the defendent) being out on bond 'was a sufficient restraint on defendent's liberty to support habeas jurisdiction'.

'Restraint on one's Liberty' seems to be a common theme related to each of these cases. So . . . Conner went to Black's Law Dictionary, Eleveth Edition; and looked up:

(on pg. 1571) restraint, n.(15c)1. Confinement, abridgment, or limitation.

(on pg. 8) abridgment, n.(15c)1. The reduction or diminution of something concrete (as a treatise) or abstract (as a legal right).

(on pg. 1102) liberty · (14c)1. Freedom from arbitrary or undue external restraint, esp. by a Government <give me liberty or give me death>.
2. A Right, privilege, or immunity enjoyed by prescription or by Grant; the absence of a legal duty imposed on a person <the liberties protected by tne Constitution> - Also termed legal liberty.

(on pg. 968) interest, (15c) · Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity.

Webster's New World College Dictionary, Third Edition
(on pg. 778-9) Liberty, 2. the sum of Rights and exemptions possessed in in common by the people of a community, state etc. 3. a particular Right, franchise, or compulsion.
(pg. 779) at liberty, 2. permitted (to do or say something) allowed.

Absorbing into proper context all of these word descriptions germane to this discssion at hand, one can only picture a single image: The United States Constitution; and the Guarantees and protections that venerated document provides its citizens.

Which is what "Restraint on one's Liberty" means: the unmitigating violation of that venerating document whose protections and Guarantees umbrellas every citizen equally.

* * * The State of Texas has clearly (Clearly) denied Conner due process, by deying him access-to-the-court wherein he had/HAS STILL a distinct 'liberty interest invested . . . that state action will cause him [Conner] to be kept in custody in the future rather than the government action under which he is presently confined. See again Id. **Rule 2. The Petition,** subdivision (b)(4); Because 'that state action' itself, denies him his Freedom!!

Juxtapositionally, it's a soundly planted legal theory of law.

It's not so much an interpretation of what one might THINK the statute means (or was meant to be) but rather, what is the clear-plain-meaning of the words (The Law) as it relates to **THIS** specific case?? or perhaps . . . a lot of specific cases.

Yes, Conner easily concedes there is some muddy water here, its somewhat ambiguous to be sure. Even the Law Books mention and use that precise description [somewhat ambiguous] saying that courts are not unanimous in this regard. Which is exactly why the Supreme Court should take up this matter for consideration in order to maintain its already established position, to support what is in our Law BOOKS, and create an opinion that brings ALL the courts under a uniform code of conduct that's consistent with the Constitution, and is NOT ambiguous.

Conner, made this exact argument with the appellate court in

his 'Application for a COA'. The 5th Circuit, responded with Appendix A. To summarize their entire position (and basis for rejection) one needs only to read the footnote on pg.2, (verbatim):

> 2. The district court concluded that Conner's alleged due process claim for injunctive relief was not cognizable in the habeas context. See Pierre v. United States, 525 F. 2d 935-36 (5th Cir. 1976) ("Simply stated, habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody[,] and it can not be used properly for any other purpose.").

Conner, is of a strong belief, that the narrow-restrictive opinion expressed by the 5th Cir. in Id. Pierre [and Conner's own case] not only clashes with some of these other cited cases, but is diametrically opposite to 2022 released Law Books that define for its readers (including students) what usages Habeas Corpus encompasses, (Quote):

> "While the language of the Act indicates that a writ of habeas corpus is appropriate only when a petitioner is "in custody" * * * the Act "does not attempt to mark the boundaries of 'custody' nor in any way other than by use of that word attempt to limit the situations in which the writ can be used." * * * And, recent Supreme Court decisions have made clear that "[i]t [habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achive its grand purpose - - the protection of individuals against erosion of their Right to be free from wrongful restraints upon their liberty."
> * * * "[B]esides physical impisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus."
>
> 398 F. 2d at 710 - 711
>
> There is, as of now, no final list of the situations which are appropriate for habeas corpus relief. It is not the intent of the Rules or notes to define or limit "custody". Unquote.

Conner, has absolutely no reservations in announcing (once again)

how those vivid words printed on the last page seem to send a crystaline message, like a feathered arrow straight into his heart, telling him that - - the protection of individuals against erosion of their Right to be free from wrogful restraints upon their liberty . . . not only includes Conner, but it quite literaly is directed to mean (and cover) all the disenfranchised people who require their voices to be heard in order to prevent an obvious Miscarriage of Justice from occurring.

In truth, Conner feels it may've been prudent in correlation to this subject to just stop at the last paragraph - - he has already made his point. Still, at the risk of bolstering his own position, he'ld like to add one final tidbit of information. By directing your attention at yet another much renowned Law Book: the Federal Postconviction Remedies and Relief Handbook, Thomas Reuters 2021 Edition. In actuality the entire contents thoughout convey controversial messages that openly defy the restrictively narrow, formalistic stance the 5th Circuit takes in Id. Pierre v. United States over availability and usages. But, for purposes of summarization, Conner ask only that you turn to **§1:30 Section 2254 Claim Not Involving Validity of Conviction or Sentence** (the heading alone, speaks volumes toward this discussion) pages 148-149, are ten full pages of examples that contain nothing but case after case dealing with due process claims . . . which happens to be the very foundation of Conner's own claim: ever since the Gatekeepers of Texas Jurisprudence (TCCA) dismissed his PDR as untimely, Conner has asserted a very strong Constitutional violation of

denial-of-access-to-the-courts claim, wherein he has a distinct 'Liberty Interest' invested. Evidence, provided by the TCCA, proves (proves beyond any doubt) that their actions of [illegible] 'dismissed as untimely' are but an illusionary concept based entirely on a false premise. Conner has definitely been denied a protected Constitutional Right and THAT denial comes at a very-very high cost . . . his FREEDOM!!

("Of what avail is it to the individual to arm him with a panoply of constitutioal rights if, when he seeks to vindicate them, the courtroom can be hermetically sealed against him by a functionary who, by refusal or neglect, impedes the filing of his papers?") McCray v, Maryland, 456 F. 2d at 6 (4th Cir. 1972).

Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed. 2d 156 (1992);

The Right to file for legal redress in the courts is as valuable to a prisoner as to any other citizen. Indeed, for the prisoner it is more valuable. Inasmuch as one convicted of a serious crime and imprisoned usually is divested of the franchise, the Right to file a court action stands . . . as his most "fundamental political Right, becoming preservative of all Rights".

"Dismissal of a first habeas corpus petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." Lonchar, 517 U.S.324, 116 S.Ct. 1293.

Huges v. Rowe, 101 S. Ct. 173 (1980):

Moves to construe this document with an eye toward the attainment of Substantial Justice, in order to protect the applicant's Righrs & due process.

A Pro Se federal habeas petitioner's submissions should be held to less stringent standards than formal pleadings drafted by lawyers. Bell v. Ercoie, S.D.N.Y. 2009, 631 F. Supp. 2d 406.

Halla v. Hopkins, 947 F. Supp. 978, 991-92; 1995 U.S. Dist. Lexis 21323;

Supports the Supreme Court's holding in Wilwording that its proper to construe a faulty habeas corpus as a 42 U.S.C. §1983 when seeking relief for alleged violations of constitutional Rights.

Wilwording v. Swanson, 404 U.S. 249 (1971).

SECOND QUESTION PRESENTED

2.) Is there ANY evidence within the lower U.S. District Court's conclusion to Conner's §2254 that suggest an apparent abuse of discretion which prevented Conner from receiving a fair-unbiased judgment?

II.

Valid Argument:

As an american citizen faced with an exacting obstruction of due process violation, that the Tex. C. Crim. A. doubled-downed on when they 'white carded' another 'denied' in answer to his 11.07 state habeas corpus application (see Appendix C-1). Conner was confronted with what to do next?? How was he to obtain the relief denied him? His 'Right' to access? Conner, was/is convinced by the law books that he had found his answer in the form of [Habeas Corpus]. So he made sure that he submitted his §2254 within a one years time limit to the state's last rejection, (see Apendix C-2).

Conner, made clear from the very beginning of his federal habeas corpus, that he was not challenging his actual conviction; but rather a due process violation by the state denying him access-to-the-courts. Which, by plain-definition, has created a "restraint upon his liberty".

After waiting three & a half long years in limbo, the lower district court failed entirely to answer the single-one certified judicial Question that was presented in Conner's §2254. But, the

district court in Appendixs B-1 & B-2 (on pg. 4, then on pg. 2) determined twice the following conclusion (verbatim):

> "The Court also concluded that to the extent the TCCA applied a state procedual rule to determine that his [Conner's] PDR was untimely, the claim is not cognizable, and his characterization of his claim as a due process violation does not change that conclusion." (unquote).

When carefully analyzing the above statement, one can but wonder how did the lower court arrive at such a conclusion? Because in truth, the TCCA has NEVER said (in any form or fashion) that they "applied a state procedural rule to determine that his [Conner's] PDR was untimely", Period. In fact, the TCCA has been almost totally silent on the matter altogether . . . so where (or How) did the lower court reach such a conclusion? and, exactly what 'state procedural Rule' was it that determined that Conner's PDR was untimely?

We respecfully suggest the lower district court crossed the line (abused its discretion) in reaching that specific conclusion. There is absolutely no evidence presented by the TCCA that would allow the district court to make such a determination. The district court is empowered and authorized only as a 'Fact Finder'. The Court can **NOT** be an Advocator for TCCA and say definitively that they relied on a 'state procedural Rule' in determining that Conner's PDR was untimely, when they (themselves) have NEVER made such a claim nor statement.

III.

Supported Facts:

The ONLY evidence of record actually from the TCCA (themselves) regarding their position on this issue can be found in Appendix F, attached to this petition; its a 'white card notice' that simply states:

> "On this day, Appellant's Pro Se petition for discretionary review has been dismissed as untimely filed."

And; Appendix J, which is a letter from the TCCA dated Thursday, June 10; 2010 and carries their sacred state seal at the top of the page, along with the names of all nine (then sitting) Judges of the Court . . . that letter states (in pertinent part, verbatim):

> "Your petition for discretionary review was filed in this Court on 3/9/2010 and was dismissed as untimely filed on 3/17/2010. The Petition was due 1/14/2010 and was not received by the Court of Appeals until 1/24/2010."

due 1/14/2010? not received until 1/24/2010??

Just as Conner outlined in his §2254, there is but a ten (10) days difference in the above listed dates - - dates (FACTS) supplied by the TCCA, in their own letter. See Appendix J.

In 2010, it was required that one's PDR be sent to the appellate court that handled direct appeal. So, Conner's PDR was addressed and sent to the proper court.

Furthermore, there/ARE only three (3) individually seperate statutes of law on the books in Texas that govern a 'Timely Filed' legal document: T.R.C.P. Rule 5, T.R.A.P. Rule 9.2. and T.C.C.P. article 45.013. All 3 are virtually a mirror image of each other

- - clearly allowing a ten (10) day grace period for delivery - - and as they relate to the cited dates (supplied by the TCCA themselves) those 3 statutes of TEXAS LAW firmly etches into any metal surface the FACT that Conner's PDR was timely delivered, exclamation mark!!

A PDR (a petition for discretionary review) is the last step in the appellate process in Texas. It is very important (even considered quite crucial by some) because it's one's final opportunity to present to the Gatekeepers of Texas jurisprudence any constitutional flaws or mistakes made during a person's trial or on direct appeal.

The record reflects, and Conner insists, that he fell/falls into that precise category; and that he had/has a distinct liberty interest invested in the TCCA's review of his PDR.

When they 'mistakenly' dismissed his PDR as untimely when - - in fact, by state procedural LAW and a whole verbiage of precedent - it was NOT untimely, they in effect denied Conner access-to-the courts. A clear Constitutional violation of due process.

No amount of wishy-washy contention can change the FACTS nor the record as they've just been outlined by Conner for the Supreme Court of the United States consideration.

But, even more compelling and germane to the discussion at handis . . . IF - for whatever reason - the foregoing issues were to be contested or argued, the "Mailbox Rule" as defined in Richards v. TDCj-CID, 710 F. 3d 573 (5th Cir. 2013), is a case that settles all controversies on the subject as it relates to Texas Law. For purposes of this petition Conner directs this Court to:

Id. Richards, at pg.(s) 578-579:

> "We must apply Campbell's holding that under Texas Law the pleadings of pro se inmates, including petitions for state postconviction relief, are deemed filed at the time they are delivered to prison authorities, not at the time they are stamped by the clerk of the court. Therefore, we hold under Texas Law Richard's §2254 application was deemed filed on October 12, 2010. For these reasons, we REVERE and REMAND".

What 'exactly' is the Campbell case that the 5th Circuit relied on in reaching their decision in Id. Richards? Campbell, is a precedent delivered by Tcca on September 22, 2010 [six (6) months after dismissing Conner's PDR as untimely] the TCCA Granted Campbell relief on HIS PDR, by acknowledging for the first time in a criminal case the doctrine of the "Mailbox Rule".

Campbell v. State, 320 S.W. 3d 338,344 (Tex. Crim. App. 2010);

> "Like our sister courts, we decline to penalize a pro se inmate who timely delivers a document to the prison mailbox. We find the analysis of the United States Supreme Court in Houston v. Lack to be compelling. We see no reason for this Court to hold contrarily to both the United States and Texas Supreme Courts. Therefore, we shall apply those considerations to an analogous situation such as the present case.
> We hold that the pleadings of pro se inmates shall be deemed filed at the time they are delivered to prison authorities for forwarding to the court clerk. Accordingly, we reverse the judgment of the court of appeals and remand this cause to that court for further proceedings consistent with this opinion. Delivered September 22, 2010."

Id. Campbell, at 340;

> In the certificate of service of that motion for a new trial, appellate declares, "under penalty of perjury" that the motion was placed in the prison mailbox on December 18, 2008.

Id. Campbell, at 341;

> The state candidly acknowledges that "no reason is found to dispute the veracity of appellant's certification [that] he placed his new trial motiom in the prison mail box on December 18, 2008".

* * * See Appendix K, which is a true & correct copy ot the

"handwritten certificate of service" that recorded the precise moment Conner delivered his PDR to prison authorities and, under Texas & Federal Law, should've been the time his petition was deemed filed; in pertinent part:

> "by placing the same in the prison unit mail box on this 13th day of Januart 2010."

See again Appendia F & J, (TCCA's own letter):

due 1/14/2010? not received until 1/24/2010?

- - a mere 10 days difference, and in compliance with 3 seperate statutes of Texas Law dealing with timely filings;

dismissed as untimely ??

But, that which thrusts and catapults this case (Conner's case) way above Id. Campbell, or even the ruling in Id. Richards is Appendix L, "Petitioner's Motion for Leave of Court" which accompanied Conner's PDR to the TCCA. It also is 'handwritten' - - and perhaps even a little amateurishly composed - - yet, it clearly shows and acknowledges a conscientious mindset on Conner's part for his NEED (regardless of the many obstacles he was confronted with) to be punctual and on time with his PDR. Read and scrutinize its entire meaning. You make the call; can you FEEL Conner's intent??

At this juncture in the summation of this argument - - and barring all other considerations - - Conner wishes to present the same exact question he asked of the lower district court in his §2254, and the 5th Circuit in his 'Application for a COA', that they both chose to ignore, and failed to answer. On next page. (verbatim):

Third Question Presented

> "After assessing all the facts and supporting evidence in correlation to precedent and the many statutory LAWS which govern the issue [in this Court's opinion] was Conner's Petition for Discretionary Review timely delivered; Yes or NO?"

This should be viewed as a 'certified question' of both Fact and Law in order to maintain uniformity with the decisions of the U.S. Supreme Court. (Unquote).

IV.

Next, After the Supreme Court has reached a determination regarding the timely filing of Conner's PDR, you may ask so what? on what basis does it even matter? and, what actual harm has been done that would justify any type of intervention by the Supreme Court?

* * * Conner (again) wishes to point out that in both of his habeas corpus pleadings (State & Federal) he made a concise due process claim based upon a denial-of-access-to-the-courts violation committed by the Texas Court of Criminal Appeals, when they refused him (and his PDR) from a proper review of the merits on a false theory of being untimely. * * *

Also, Conner would remind the Supreme Court that he is but a Pro Se student of understanding in general who may lack fundamental sophistication when it comes to legal lititure. So its with an innocent-naive heart that inquires (with much honesty) of this Court: what does Due Process mean, exactly? what equates to

a denial-of-access-to-the-courts claim? These are all very important questions in examining this petition as a whole.

For an answer, Conner turns to Ryland v. Shapiro, 708 F. 2d 967 (5th Cir. 1983). Wherein you voice wiyh a strong deep-conviction (defining for future posterity) the position of the Supreme Court of the United States, through the 5th Circuit; at Id. 971-972, (verbatim):

The Substantive Right of Access to Courts:

The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution. In Chambers v. Baltimore & Ohio Railroad, 207 U.S.142, 28 S. Ct. 34, 52 L.Ed.143 (1907), the Supreme Court characterized this right of access in the following terms:

> The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, . . . but is granted and protected by the Federal Constitution. 207 U.S. at 148, 28 S.Ct. at 35 (citations omitted). It is clear that the Court viewed the right of access to the courts as one of the privileges and immunities accorded citizens under artical 4 of the Constitution and the fourteenth amendment.

In California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 92 S.Ct. 609, 30 L. Ed. 2d 642 (1972), the Supreme Court found in the first amendment a second constitutional basis for the right of access: "Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but one aspect of the right of petition." Id. 92 S.Ct. at 612.

This court recognized the first amendment right of access to the courts in Wilson [708 F. 2d 972] v. Thompson, 593 F. 2d 1375 (5th Cir. 1979), where we stated: "It is by now well established that access to the courts is protected by the First Amendment right to petition for redress of grievances." Id. at 1387. See also NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 336; 9 L. Ed. 2d 405 (1963); Coastal States Marketing Inc. v. Hunt, 694 F.2d 1358, 1363 (5th Cir. 1983).

A number of other courts have also recognized that this right of access is encompassed by the first amendment right to petition. See McCray v. Maryland, 456 F. 2d 1,6 (4th Cir. (1972); Harris v. Pate, 440 F. 2d 315, 317 (7th Cir. 1971): Pizzolato v. Perez, 524 F. Supp. 914, 921 (E. D. La. 1981): Crews v. Petrosky, 509 F. Supp. 1199, 1204 n. 10 (W.D.Pa. 1981).

A third constitutional basis for the rihgt of access to the courts is found in the due process clause. In Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L. Ed. 2d 935 (1974), the Supreme Court defined the right of access in a civil rights action under section 1983 in the following terms:

> The right of access to the courts, upon which Avery [Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L. Ed. 2d 718 (1969)] was premised, is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. It is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ. Id. 94 S.Ct. at 2986. See also Mitchum v. Purvis, 650 F. 2d 647, 648 (5th Cir. 1981); Rudolph v. Locke, 594 F. 2d 1076, 1078 (5th Cir. 1979). The due process clause has also been construed to allow prisoners meaningful access to the courts. See Bounds v. Smith, 430 U.S. 817, 97 S.Ct 1491, 52 L. Ed. 2d 72 (1977); Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 l. Ed. 2d 113 (1971).

* * * A mere formal right of access to the courts does not pass constitutional muster. Courts have required that the access be "adequate, effective, and meaningful." Bounds v. Smith, 97 S.Ct. at 1495; see also Rudolph v. Locke, 594 F.2d at 1078. Interference with the right of access to the courts gives rise to a claim for relief under section 1983. Sigafus v. Brown, 416 F. 2d 105 (7th Cir. 1969) (destruction by jail guards of legal papers necessary for appeal supports claim for damages under §1983); McCray v. Maryland, 456 F. 2d at 6 ("Of what avail is it to the individual to arm him with a panoply of constitutional rights if, when he seeks to vindicate them, the courtroom can be hermetically sealed against him by a functionary who, by refusal or neglect, impedes the filing of his papers?"); Crews v. Petrosky, 509 F. Supp. at 1204 ("An allegation that a clerk of a state court has negligently delayed the filing of a petition for appeal, and that the delay has interfered with an individual's right of access to the courts, may state a cause of action under 42 U.S.C. §1983.") (emphasis added). See also Harris v, Pate, 440 F. 2d 315, 317 (7th Cir. 1971) (prison authorites may not place burdens on right of access to courts); Corby v, Conboy, 457 F. 2d 251, 253 (2d Cir, 1972).

In conclusion, it is clear that, under our Constitution, the right of access to the courts is guaranteed and protected from unlawful interference and deprivations by the state, and only compelling state interest will justify such intrusions.

WOW . . ."protected from unlawful interference", did this cardinalated Supreme Court really mean those vividly poetic words?? Because the State of Texas certainly hasn't presented any type of compelling interest that might justify such an intrusion or exception to the Rule.

AND . . . "A mere formal right of access to yhe courts does NOT pass constitutional muster. Courts have required that the access be 'adequate, effective, and meaningful'?"

'Adequate, effective, and meaningful' are the exact words that you've sounded loudly at (at every opportuniy) with much force and articulation; but by what scale are they measured? adequate, effective, and meaningful?? Conner, unpretentiously suggests that by whatever mark you balance them against - - because of the TCCA dismissal of his PDR as untimely when, in Fact, it was NOT untimely - - Conner did **NOT** receive an adequate, effective, nor meaningful access to the court.

Therefore, Conner was denied a basic fundamental Constitutional Right . . . "protected from unlawful interference".

V.

Fourth Question Presented

4.) Was the 5th Circuit Court of Appeals' decision to deny Conner a COA in keeping with 28 U.S.C. §2253(c)(2) and the many binding precedents established by this Supreme Court of the United States?

Conner, confesses that he found it somewhat ironic and disconcerting that in answer to his "Application for a COA" the 5th Circuit cites in their 'Order' Slack v. Daniel, 529 U.S. 473, 483-84 (2000): To obtain a COA, a movant must make "a substantial showing of the denial of a Constitutional Right".

Conner, has just used up well over 20 pages of this petition essentially arguing a due process violation with a very persuasive denial-of-access-to-the-courts claim. Which easily (over whelmingly) meets and surpasses the standard requirement set by Id. Slack: To obtain a COA, a movant must make "a substantial showing of the denial of a Constitutional Right".

So, why was he [Conner] denied a COA? the Right to present to the appellate court his constitutional claim? Their denial was based solely on procedural grounds [as simply stated] that Conner's due process claim was not cognizable in the habeas context. See again Appendix **A-1.**

IF a Ground was dismissed by the district court on procedural grounds [as in Conner's case] a certificate must be issued if the petitioner meets Barefoot v. Estella, 463 U.S. 880, 893 (1983) standard as to the procedural Question, and shows, at least, that jurist of reason would find it debatable whether the ground of the petition at issue states a valid claim of a Constitutional Right, Slack v. Daniel, 529 U.S. 473, 483-484 (2000).

Precisely, as in Conner's case; yet, there is (like he has already stated) a bit of socratic irony in the Fact that the 5th Cir. cites Slack on page 2 of their 'Order', but clearly misapplied the

standards set in that case which rest only on a "valid claim of a Constitutional Right". 28 U.S.C. §2253.

* * * Buck v. Davis, 137 S.Ct. 759, 197 L. Ed. 2d 1 (2017); 2017 U.S. Lexis 1429, 85 U.S.L.W. 4037:

Headnote: 7, When a Court of Appeals properly applies the certificate of appealability (COA) standard and determines that a prisoner's claim is not even debatable, that necessarily means the prisoner has failed to show that his claim is meritorious. But the converse is not true. That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable. Thus, when a reviewing court inverts the statutory order of operations and first decides the merits of an appeal, then justifies its denial of a COA based on its adjudication of the actual merits, it has placed too heavy a burden on the prisoner at the COA stage. Judicial precedent flatly prohibits such a departure from the procedure prescribed by 28 U.S.C. §2253.

HABEAS CORPUS - - CERTIFICATE OF APPEALABILITY

Headnote: 14, A litigant seeking a certificate of appealability must demonstrate that a procedural Ruling barring relief is itself debatable among jurist of reason; otherwise, the appeal would not deserve encourgement to proceed further.

In relation to the above Headnote 14, Conner strongly believes that the numerous recitations (made earlier in this petition) taken straight out of the Law Books & Rules of Law themselves; not to mention the precedents of this U.S. Supreme Court and other federal courts clearly demonstrate that jurist of reason could/would be able to debate that §2254 has many other usages than the limited restrictions the 5th Circuit apparently subscribes to. Therefore, Conner surmounts the two seperate threshold requirements necessary for the issuance of a COA.

Conner, distinctly recalls the year 2017, for a lot of different reasons. One of the less significant at the time, but still making a certain conscientious impact upon his psychic was this Court's ruling in Id. Buck v. Davis. Conner can remember his first reading of the case. And reaching an obvious conclusion: that the Supreme Court felt it was necessary to send a message to all of the appellate courts, but especially to that of the 5th Circuit. You elected to use (Chose) Buck v. Davis because what the appellate court was doing to prisoners (in general) who sought a COA, was abhorrently apparent on the surface and unfair as a whole. You realized it was an issue that effected a large number of people on a level of Constitutional magnitude. Conner, humbly suggest to the members of the Supreme Court that these matters he brings now into your sacred realm are of no less importance to just a broad number of the populace.

You're once again being called upon as the Great Protector of the People's Rights. And, the Champion of the Constitution itself to weigh in on a subject that has already been settled but, is so transparently being ignored in a flagrant way.

VI.

In closing - - winding this petition up - - Conner, would ask you to turn to Appendix M. The very final exhibit presented. Which is Conner's "Pro Se Petition for Rehearing and/or Reconsideration Requesting En Banc Review" submitted to the 5th Circuit. Who simply 'Denied' it, without further comment.

In many ways it mirrors the same argument he has made here. With the exception of why the appellate court should recognize and act upon Conner's substatially grounded Constitutional Claim of a due process violation committed by the State of Texas . . . above and beyond anything else. Even if it would require construing his §2254 as a 42 U.S.C. §1983 Civil Rights complaint. In order to correct a grave miscarriage of justice. Conner supplied sufficent precedent to support and encourage such a move on the part of the court. Who, like he has already stated simply 'Denied' his petition altogether. See again Appendix A-2.

But, in reference to Appendix M, it may be advantageous to Conner's position if you were to survey (with scrutiny) the "Mitigating Factors" found at III. on page 9, of that petition. They're rather unique on their own, and Conner feels are even quite relevent to some degree. Because if the Supreme Court fails to champion his cause, then in essence they truly are literally sentencing Conner (and his Constitutional Claims) into an endless existence of legal purgatory. Where they will no doubt become ultimately lost forever. Without this Court's intervention (here and now) how many others will succumb to the same (or similar) inexplicable demise??

CONCLUSION

Wherefore, Premises Considered, Conner Prays the Supreme Court will acknowledge that in Fact & Law his PDR was timely delivered, then Grant this Petition for Writ of Certiorari.

Respectfully Submitted, on: 11-21-22 Stacy L. Conner

AFFIDAVIT

I write this statement in support of the foregoing "Petition for Writ of Certiorari". In an honest effort to convey or assert that the discussed PDR (petition for discretionary review) was timely submitted [filed] when I personally placed that legal document "in the prison unit mailbox on the 13th day of January 2010". Just as I've stated many of times since the very beginning of this controversy, and have given strong oath under penaty of perjury to that irrefutable fact! See Appendix K.

Date: 11-21-2022

Stacy L. Conner

UNSWORN DECLARATION

In compliance with both 28 U.S.C. §1746 and V.T.A.C. Civil Practice and remedies Code §132.001 - 132.003:

"I, Stacy L. Cooner #1428940, presently incarcerated within the Texas Department of Corrections, housed at the Polunsky Unit in Polk County, Texas; do give solemn oath and declare (certify, verify, or state) under penalty of perjury that this 'Petition for Writ of Certiorari' including the above Affidavit and all exhibits contained in the following Appendix (and Certifications) are True & Correct to the best of my knowledge; so help me God!"

Dated: 11-21-2022

Stacy L. Conner
#1428940 Polunsky Unit
3872 FM 350. South
Livingston, Tx. 77351

Pro Se Petitioner