

No. 22-6696

Supreme Court, U.S.
FILED

NOV 15 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Rudy Garcia — PETITIONER
(Your Name)

VS.

Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rudy Garcia
(Your Name)

Lynaugh Unit, 1098 S. Hwy. 2037
(Address)

Fort Stockton, TX 79735
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

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QUESTION(S) PRESENTED

Question 1:

Introduction: In a previous, unrelated case the Texas Court of Criminal Appeals decided that, the now disbarred Prosecutor, Ralph Petty's undisclosed employment equated to prosecutorial misconduct. Relief in that habeas proceeding was granted. Mr. Petty was similarly involved in the current case.

Question: Does the Texas Court of Criminal Appeals dismissal of Petitioner's habeas claim conflict with their previous decision of a similar claim? By dismissing Petitioner's habeas claims was he denied a fair and impartial trial, Due Process, and equal protection of the law? Does this set a dangerous precedent to violate established standards to protect government reputations?

Question 2:

Introduction: The U.S. Supreme Court decided that warrantless blood draws are unconstitutional. Trial counsel made no effort to have the unconstitutional blood draw suppressed. Petitioner was convicted largely on the results of this unconstitutional blood draw.

Question: Did the Texas Court of Criminal Appeals' decision, in conflict with U.S. Supreme Court precedence, improperly excuse trial counsel's lack of knowledge of relevant legal matters? Through the Court's orders has it also set precedent allowing complained of counsel to excuse their own failures by declaring a belief in the guilt of their client?

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

State v Garcia In the 385TH District Court, Midland Texas Cause No. CR41780

Garcia v State. No. 11-13-00360-CR (Tex. App. Eastland 2015) Affirmed.

Petition for Discretionary Review - Refused March 2016, PD-1366-15

Application for writ of habeas corpus - Denied December 2018 - WR-77, 695

Application for writ of habeas corpus - Dismissed November 2021 - WR-77, 695-02

Application for writ of habeas corpus - Denied August 2022 - WR-77, 695-04

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Garcia v State. No. 11-13-00360-CR
(Tex. App. - Eastland, Oct. 8 2015) (not designated for publication)

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TABLE OF AUTHORITIES CITED

CASES

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Ex parte Moody, 991 S.W. 2d 856 (Tex Crim App 1999)
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Missouri v McNeely, 133 S.Ct. 1552 (2013)
Strickland v Washington, 104 S.Ct. 2052 (1984)

STATUTES AND RULES

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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 Eleventh Court of Appeals court 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.

☐ 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 Aug. 24, 2022.
A copy of that decision appears at Appendix _____.

☒ Denied without written order

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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

Fourth Amendment of the U.S. Constitution: See: Decision of ~~MAN~~
Missouri v McNeely 133 S.Ct 1552

Fifth Amendment of the U.S. Constitution

Sixth Amendment of the U.S. Constitution

Fourteenth Amendment of the U.S. Constitution

STATEMENT OF THE CASE

In the early morning hours of January 17, 2013 Petitioner was stopped for a traffic violation. City of Midland Police Officer Bradley Barnes suspected Petitioner of intoxication. After Petitioner refused to perform any field sobriety tests, Officer Barnes arrested him for Driving while Intoxicated.

Officer Barnes transported Petitioner to Midland Memorial Hospital. At the hospital Petitioner's blood was seized without consent or warrant. The seized blood was analyzed at the Texas Dept. of Public Safety Laboratory in Midland. The blood alcohol content was reported at 0.205.

Petitioner, on advice of counsel, Elected a bench trial. The prosecution presented three witnesses: Officer Barnes, Nurse Misty Coates, and Chemist Marissa Silva. Ms. Coates' and Ms. Silva's testimonies were exclusively related to the blood sample seized without consent or warrant.

Trial Counsel, having determined his clients guilty, did not fully investigate the relevant legal matters applicable to the case. Without the easily obtainable U.S. Supreme Court decisions, Trial Counsel negligently decided not to challenge the admission of the blood evidence. Trial Counsel failed to subject the State's case to full and competent adversarial testing. Instead, Trial Counsel's strategy was to submit without a defense and rely on the mercy of the Trial Court. Trial Counsel presented no opening, no witnesses and no argument.

Petitioner was found guilty of Driving While Intoxicated. Trial Court found the enhancements to be "true." Petitioner was sentenced to 40 years incarceration in the Texas Department of Criminal Justice.

Petitioner appealed his conviction and sentence to the Eleventh Court of Appeals which affirmed.

Petitioner filed his initial application for writ of habeas corpus on May 9, 2018. He presented a single ground of ineffectual assistance of counsel. Midland County Assistant District Attorney Ralph Petty prepared the State's response and proposed findings of fact. The Texas Court of Criminal Appeals Denied, without hearing or written order, Petitioner's writ.

Petitioner filed a subsequent writ on July 22, 2019. This writ was dismissed.

The initial habeas counsel, upon learning that Mr. Petty, the Midland County Assistant District Attorney, had an undisclosed employment relationship with the Trial Judge, filed a motion. The "Motion for Rehearing Habeas Application Denied Without Written Order" was filed on July 8, 2021.

The Texas Court of Criminal Appeals dismissed the motion. In the per curiam order the Court determined that its initial denial of relief was based on Trial Counsel's affidavit and the record.

Petitioner filed a Third habeas application on April 20, 2022. The Texas Court of Criminal Appeals "denied without written order" the writ. The Court provided no further explanation.

This Petition follows.

REASONS FOR GRANTING THE PETITION

Question 1: Under the Fifth and Fourteenth Amendments of the U.S. Constitution a person is guaranteed the right to Due Process. Further, the Fourteenth Amendment provides for the equal protection of the laws. The Texas Court of Criminal Appeals has denied Petitioner these very protections and set a wide-ranging, dangerous precedent.

Mr. Ralph Petty, Midland County Assistant District Attorney had an undisclosed employment relationship with the trial judge. In a previous case the Texas Court of Criminal Appeals decided:

Judicial and prosecutorial misconduct - in the form of an undisclosed employment relationship between the trial judge and the prosecutor appearing before him - tainted Applicants entire proceeding from the outset. As a result, little confidence can be placed in the fairness of the proceedings or the outcome of Applicant's trial. Ex parte Young, 2021 Tex. Crim. App. Unpub. LEXIS 508*12 (Sept 22, 2021)

The Court further stated:

The evidence presented in this case supports only one legal conclusion: that Applicant was ~~denied~~ deprived of his due process rights to a fair trial and an impartial judge. id@*13. NOTE: The Trial Judge in Young died prior to the writ.

The facts of Mr. Petty's involvement in the current case are identical to that in Young. As such the Texas Court of Criminal Appeals rulings should also match. Instead, the Court denied relief and perpetuates the Constitutional violations.

As Mr. Petty, who was permitted to resign from the State Bar of Texas in lieu of disciplinary action (id@*7), improper actions impacted more than 300 cases the embarrassment of exposure to the Texas Justice System is wide-spread. The Court's decision, in conflict with the precedent of Young, and in violation of Petitioner's Fifth and Fourteenth Amendment protections serves to attempt to minimize the embarrassment to the State. This sets a dangerous precedent which could impact the other 300 plus cases affected by Mr. Petty's misconduct and future cases of similar misconduct.

Question 2: In Petitioner's initial habeas application he presented argument of ineffectual assistance of counsel. The basis of this argument was Trial Counsel's failure to challenge the admission of evidence related to the blood seized without consent or warrant.

The Sixth Amendment imposes on counsel a duty to investigate because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options. Strickland v Washington, 104 S.Ct. 2052 2060 (1984)

The Texas Court of Criminal Appeals has established:

In assessing competence, we have held counsel accountable for the knowledge, or the ability to attain knowledge of relevant legal matters that are neither novel nor unsettled. Ex parte Moody, 991 S.W. 2d 856, 858 (Tex. Crim. App 1999)

Trial Counsel failed in his most basic duty to exercise the diligence of a reasonably competent defense attorney. Eight months prior to Petitioner's trial the U.S. Supreme

Court decided Missouri v. McNeely, 133 S.Ct 1552 (2013). This case determined a relevant legal matter regarding the Constitutionality of a warrantless blood seizure. Trial Counsel, in an affidavit, acknowledged his ignorance of this key, relevant decision. The knowledge of this decision was easily attainable.

This knowledge would provide any reasonably competent defense attorney additional options for the defense. The prosecution relied primarily on the testimony of the three State witnesses. A reasonable challenge to the admissibility of the seized blood would have eliminated two of these witnesses and the blood analysis. The State would then rely solely on the testimony of former Officer Barnes. Former Officer Barnes' credibility would become a key factor as he had faced disciplinary proceedings for his professional misconduct.

The Court's decision to deny relief was based on Trial Counsel's Affidavit and the record. The record is based on Trial Counsel's uninformed decisions. This undermined the Sixth Amendment by permitting Trial Counsel to excuse his own incompetence. Counsel acknowledged that he had determined Petitioner's guilt prior to trial. He also acknowledged that his entire trial strategy was based on this belief. With this mindset Trial Counsel made his professional decisions ignorant of reasonably expected knowledge of relevant legal matters. Absent this knowledge he failed to subject the State's case to meaningful adversarial testing.

CONCLUSION

The denial of relief in conflict with well established precedent is a denial of Petitioner's Constitutional Rights. The Texas Court of Criminal Appeals opens the door to undermining a defendant's rights and cast doubt on the integrity of the justice system.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rudolph Sarcik

Date: November 4th, 2022