22-6781 ORIGINAL

In The

SUPREME COURT OF THE UNITED STATES

*

SAMUEL ADKINS,

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

*

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QUESTIONS PRESENTED

Petitioner, who was victim of long-term sexual abuse by his stepfather, was convicted of aggravated sexual assault and sentenced to 65 years in the Texas Department of Criminal Justice. During the time that he was awaiting trial, Petitioner became embroiled in a conflict with his court-appointed counsel and refused to communicate with his attorney or anyone from his office in any way. Prior to trial, at numerous pretrial hearings, that attorney made a point of putting it in the record that because of Petitioner's refusal to communicate with him, he was not doing the things that he would normally do to prepare for trial, but he failed to withdraw from Petitioner's case even when the trial court said that his withdrawal would be permitted. Ultimately, Petitioner was forced into a trial with this attorney, who failed to put on a single witness, and failed to present this crucial evidence of Petitioner's history of being sexually abused as mitigating evidence during punishment. The state habeas court made findings of fact and conclusions of law, but these findings and conclusions don't address the issues that Petitioner raised. The Texas Court of Criminal Appeals (TCCA) denied relief without written order, which requires this Court to "look through" that denial to the trial court's findings of fact and conclusions of law as the basis for the denial. The questions presented are:

I. Did the state court err when it held that Petitioner's Sixth Amendment right to the effective assistance of counsel was not violated where Petitioner was forced into a trial with an attorney whom he did not trust, had lost confidence in, and absolutely refused to communicate with?

II. Does the state court's decision-that counsel was not ineffective for failing to investigate, develop and present evidence of prior sexual abuse at the hands of his stepfather, and its effects on him, as mitigating evidence at punishment-contradict this Court's clearly established law, as well as the decisions of the state courts?

RELATED CASES

* State v. Adkins, No. D-1-DC-13-904105, 427th District Court of Travis County. Judgment entered April 18, 2014.

* Adkins v. State, No. 03-14-00285-CR, Third Court of Appeals. Judgment entered February 2, 2017.

* Adkins v. State, No. PD-0268-17, Texas Court of Criminal Appeals. Judgment entered June 2, 2017.

* Ex parte Adkins, No. WR-94,088-01, Texas Court of Criminal Appeals. Judgment entered December 21, 2022.

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Petitioner, Samuel Adkins, respectfully petitions for a writ of certiorari to review the judgment of the TCCA.

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OPINIONS BELOW

The TCCA's denial of habeas corpus relief without written order (App. 1) is unreported. The state district court's findings of fact and conclusions of law (App. 2) is unreported. The TCCA's refusal of discretionary review on direct appeal (App. 3) is unreported. The Texas Court of Appeals' unpublished opinion affirming the conviction on direct appeal (App. 4) is available at 2017 Tex. App. LEXIS 875 (Tex. App.-Austin, Feb. 2, 2017). The judgment of conviction of the state district court (App. 5) is unreported.

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JURISDICTION

The TCCA denied relief on December 21, 2022. This Court has jurisdiction under 28 U.S.C. § 1257(a).

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CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides, in pertinent part, "In all criminal prosecutions, the

accused shall enjoy the right to...have the Assistance of Counsel for his defense."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, "No State shall...deprive any person of...liberty...without due process of law..."

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STATEMENT

A. Procedural History

Petitioner pled not guilty to aggravated sexual assault in the 427th District Court of Travis County, Texas. The jury convicted him, and the court assessed punishment at 65 years on April 18, 2014.

The Texas Court of Appeals affirmed Petitioner's conviction in an unpublished opinion issued on February 2, 2017. The TCCA refused discretionary review on June 2, 2017. Adkins v. State, No. 03-14-00285-CR, Tex. App. LEXIS 875 (Tex.App.-Austin, Feb. 2, 2017, pet. ref'd).

Petitioner filed a state habeas corpus application on April 20, 2022. The trial court, without conducting a live evidentiary hearing, recommended that relief be denied. The TCCA denied relief without written order on December 21, 2022. Ex parte Adkins, No. WR-94,088-01 (Tex. Crim. App. Dec. 21, 2022).

B. Factual Statement

1. The Facts

On the afternoon of July 29, 2012, Petitioner picked up Kaylynn "Simpkins" and Rachel "Smith" (a pseudonym) from Smith's house to go hang out at the greenbelt. During the afternoon the three drank beer, smoked a little bit of marijuana, and hung out. Petitioner showed some interest in Smith. At approximately 8 to 9 p.m., the three of them left to go to Petitioner's stepfather's house where they hung out for a while longer.

At approximately 1:00 a.m. Simpkins needed to leave so Petitioner drove the three of them to Smith's house where Simpkins' car was parked. Simpkins got out. But Smith, who still wanted to have a little more fun, returned to Petitioner's stepfather's house with him.

At approximately 3:00 a.m., after Petitioner mistakenly called her Carolina, Smith told him to take her home. The pair left Petitioner's stepfather's house in a white pickup truck. Shortly thereafter, Smith was brutally assaulted by Petitioner in a sort of drive. She was able to flee and flagged down a car. The driver of the car, Joseph "Kemp", stopped and picked Smith up. She told him that she had been raped and asked him to call the police.

2. The Charges

Petitioner was indicted by a Travis County Grand Jury for the offenses of aggravated sexual assault and aggravated kidnapping. Petitioner was re-indicted on November 13, 2013, in Cause No. D-1-DC-13-904105. That indictment once again alleged that Petitioner committed the offenses of aggravated sexual assault and aggravated kidnapping, but also added a third count for aggravated assault causing serious bodily injury. (C.R. 5-9)

3. The Attorney-Client Relationship

On April 15, 2013, William "Hines" was appointed to represent Petitioner. Initially Petitioner was open and honest with Hines about all things relating to the offenses for which he was charged. Petitioner also disclosed to Hines that he had been a victim of long-term sexual abuse at the hands of his stepfather Stuart "Walsh", and informed Hines as to where information could be found which would support these accusations of the sexual abuse that he had endured for over two years. (App. 6) Petitioner did suggest that if he went to trial, he could deny everything, but Hines informed him that he could not allow him to get on the stand and lie. Petitioner accepted this and thought the issue was settled.

The attorney-client relationship between Petitioner and Hines began to deteriorate when Hines gave him information that was not truthful. And when Hines refused to petition the court for a bond reduction when Petitioner had been in jail for an

extended period of time without going to trial.

4. The Pre-Trial Proceedings

On December 13, 2013, Petitioner was arraigned. The State made a formal offer of 50 years. (2 RR 10) Petitioner declined that offer. (2 RR 11) Petitioner then spoke with Hines and expressed that he would be willing to accept responsibility and enter a plea of guilty in exchange for 15 years. Hines told Petitioner, 'That isn't enough time for you. You'll still have some of your youth left.' Petitioner immediately lost confidence in Hines as counsel. On January 24, 2014, Petitioner submitted a pro se motion to dismiss counsel, informing the court that he felt this way. (C.R. 33-34)

Petitioner had also written two letters to the court expressing his reasons for feeling like the attorney-client relationship between he and Hines was irreparably damaged. At the hearing on February 19, 2014, Petitioner mentioned these two letters and requested permission from the court to read them on the record. The court refused to allow Petitioner an opportunity to put any portions of these letters into the record. (4 RR 4-5; App. 7)

Petitioner reurged his motion to dismiss counsel. (4 RR 5-6; App. 7) Ultimately, the court held that it found no legal reason to remove Hines as counsel. (4 RR 8; App. 7)

Petitioner maintained his position and refused to communicate with Hines or anyone from his office prior to trial,

which Hines put on the record repeatedly. 'Additionally, Judge, I want to put on the record just so there's no misunderstanding at a later point, that Mr. Adkins has indicated he no longer wishes to have any meetings with me and that if I come to visit him at Del Valle where he's housed, he will refuse that visit. We've talked about that and I've talked about how that's probably not the best idea and about how that will limit his ability to assist me in the preparation of the trial. But I have instructed him that I am not going to come out if he is going to refuse and that he understands that, I've also told him if he changes his mind, he can contact someone and let me know and I'm happy to come visit him or he can write me a letter.' (6 RR 5-6; App. 8)

'And, Judge, we should probably put on the record: Mr. Adkins has previously informed the Court that he will refuse any visits that I request. He refused my attempt to see and counsel with him today. He has refused my offices' attempt to see him at Del Valle. So we're at the point where, even though I'm still the attorney on the case, he is refusing to communicate in any way with my office. So--' (7 RR 7-8; App. 9)

'The final matter, Judge, and I've placed this on the record previously but Mr. Adkins has indicated he is not going to communicate with me, has refused my visits. I have had three attempts to visit Mr. Adkins in holding at Del Valle jail and he has refused all of those visits. He did agree to speak with me today in holding but he has maintained that that was for the

limited purpose of today's hearing and that if I come out to Del Valle, he will refuse the visit again.

So with that understanding, I'm not going to go to Del Valle to waste his time. And I just wanted to put that on the record as to why I'm not going to be doing what I would normally do and make several visits as we're this close to trial.' (8 RR 7; App. 10)

Remarkably, the court instructed Hines that he would be allowed to withdraw from Petitioner's case if he wanted to, and it was Hines who would not remove himself from representation. (7 RR 5; App. 9)

5. The Trial

On April 14, 2014, Petitioner's trial began as scheduled. During its case in chief, the State called ten witnesses. David "Boyd", a corporal with the Austin Police Department ("APD"), (9 RR 143); Ryan "Lillie", also a corporal with the APD, (9 RR 157); Kemp, who stopped for Smith when she flagged him down, (9 RR 166); Simpkins, a friend of both Petitioner's and Smith's, (10 RR 9); Smith, the victim in the case, (10 RR 32); Scott "Stanfield", a detective with the APD Sex Crimes Unit, (10 RR 82-83); John Mark "Prada", a crime scene specialist with the APD, (10 RR 104); Jenny "Black", a sexual assault nurse examiner, (10 RR 113); Diana "Morales", the DNA analyst at the APD Crim Laboratory, (11 RR 6); and Marshall "Vogt", who was the senior forensic analyst for the District Attorney's Office, (11 RR 36).

Smith, the victim, testified that she first saw Petitioner in middle school. (10 RR 32) On July 29, 2012, she went with Simpkins to hang out. They went swimming. (10 RR 33) They shared two six-packs equally, and a stranger offered them marijuana. (10 RR 35) It was getting dark when they left, so she guessed it was about 8 or 9 o'clock. (10 RR 36) They hung out for three or four hours before Simpkins wanted to leave. (10 RR 37) During that period nothing made her uncomfortable. (10 RR 38) After dropping Simpkins off, they went back to Petitioner's house and drank some more. (10 RR 40) At some point Petitioner began touching Smith. He called her 'Carolina' and it weirded her out. (10 RR 41) Smith started to feel uncomfortable. Id. Petitioner was saying things that were sexually inappropriate. Smith felt like he was talking towards someone else, but speaking at her. It was strange but not aggressive. She told him to take her home. (10 RR 42)

While Petitioner was driving Smith was texting friends that she felt uncomfortable. (10 RR 44) The ride was silent. Id. At some point, Petitioner forcefully tried to take her phone from her. He knocked it out of her hand, and it fell by the door panel. (10 RR 45) As Smith was trying to reach for it, Petitioner began punching her in the arm and on the side of her face. Id. This lasted about a minute, then Petitioner pulled into a half driveway. (10 RR 46; SX: 9-13) Petitioner began choking her in a head lock. Smith felt like she was going to pass out. (10 RR 48) He pulled her out of the truck. He said he wanted to kill her. (10 RR 49) 'He said he was going to fuck me

and that he didn't want to go to jail so he was going to kill me so he wouldn't go back.' (10 RR 49) Petitioner choked her, and was punching her really hard on the right side of her face. (10 RR 50) He said he would take her in the field where no one would find her. Id. Smith said she fought back. (10 RR 51) According to her, Petitioner made her take her shorts off, and that's when he put his fingers into her vagina. He was doing that for a couple of minutes. (10 RR 53) Smith was trying to talk to Petitioner and he started to stop. They were talking for a minute and he was explaining to her about his past. Id.

After a while, they were briefly separated, and in that second Smith decided to run off. (10 RR 54) Smith identified SX: 14-32 as pictures of her injuries. (10 RR 55-62) At the hospital they swabbed Smith's vagina, hands and mouth for DNA. (10 RR 63)

The only witness that Hines called for the defense was Detective Stanfield. After reviewing the videotape of Smith's interview he testified that Smith had previously said that the contact with her vagina was ten to fifteen seconds. (11 RR 39) She had said nothing about being left in the field. (11 RR 39)

Petitioner did not testify, and Hines presented no other witnesses. (11 RR 40)

The Defense rested.

6. The Verdict

The jury returned a guilty verdict for aggravated sexual assault. (11 RR 62)

7. The Punishment Phase

During punishment, the State called four witnesses. The first was Danielle "Duchnick", Petitioner's former therapist for approximately six months. (12 RR 24) She testified about an incident from August 5, 2009, where Petitioner contacted her at 4:00 a.m., and expressed that he was suicidal and needed to see her. (12 RR 26) Duchnick agreed to meet him. According to her, Petitioner appeared quite intoxicated, and she convinced him to let her drive him home. (12 RR 27) Duchnick told Petitioner that she wanted to let his family know that he had violated the rules of his probation by being out and intoxicated. (12 RR 28) He instantly became aggressive and violent. Id. He told her that she wasn't leaving without being raped, and threw her down twice. (12 RR 29) Petitioner put her in a choke hold. (12 RR 30) She could barely breathe, and he pulled her into his bedroom. (12 RR 31) When he let go, she screamed for his mother then ran out of the house. (12 RR 32) Petitioner also hit his grandmother in the face and she fell down and cried for help. (12 RR 33)

Duchnick denied that Petitioner had confided in her about the abuse by Walsh. (12 RR 37)

The State's second punishment witness was Virginia "Closs", a neighbor of Petitioner's from across the street, who

testified that on the morning of October 25, 2008, Petitioner broke into her house and came into her room. (12 RR 40) He touched her, making his way up to her private parts. Id. It seemed like he was trying to take his pants off, so she quickly got up and ran upstairs to her dad. Petitioner was trying to put his hands inside of her. Id. Closs' dad found him hiding in the pantry and kicked him out. (12 RR 41)

The State's third punishment witness was Dawn "Weidman", who worked for the Travis County Juvenile Probation Department. (12 RR 63) She testified that she was assigned to supervise Petitioner, He was adjudicated in November 2008. (12 RR 64) In September 2009, Petitioner was removed from his mother's home and placed in the sex offender program at Rockdale Regional Juvenile Justice Center ("RRJJC"), in a 6 to 9 month program. He was successfully released in May 2010. (12 RR 66) Petitioner went to the Texas Youth Commission from August 2010 to May 2011. (12 RR 67) Weidman ceased to have contact with Petitioner or his family. (12 RR 68)

The State's final witness at punishment was Matthew "Ferrara", a licensed psychologist, and sex offender treatment provider. (13 RR 5) Ferrara's testimony was especially damning for Petitioner. He opined that Petitioner had a number of unique or extraordinary risk markers, and that he had distinguished himself as very unusual. (13 RR 8) That he was different from 90 percent of sex offenders in a bad way because he was someone who would not respond to treatment. (13 RR 13)

He opined that it was exceptionally likely that Petitioner would reoffend. (13 RR 21) According to Ferrara, Petitioner had been losing contact with reality. (13 RR 22)

Hines did allude to Petitioner's history of being sexually abused during cross-examination of Ferrara, although in hypotheticals, at which time Ferrara did agree, hypothetically, that over 60 percent of all children who are sexually abused experience mental health problems. (13 RR 32) He also agreed that the parent's reaction to the abuse is critical. (13 RR 33) Lastly, Ferrara agreed that this horrific abuse by somebody who's supposed to be your guardian could cause people to act out. (13 RR 34)

On redirect, the State made sure to point out that Hines had talked at length in his hypothetical about child abuse, but they didn't know what Petitioner did or did not suffer from as a child. (13 RR 42)

After Ferrara's testimony, Hines recalled Simpkins for a voir dire examination. (13 RR 43) Reluctantly, Simpkins admitted that less than a minute into her interview, she told the detective that Petitioner had always been a little weird. (13 RR 43-44) After they got to Walsh's house she asked, "what's your deal?" Simpkins agreed that Petitioner told her not only that he went to jail, but that he was raped by Walsh for two years when he was a teen. (13 RR 44) Simpkins stated that when he told her he had been raped it made sense to her why he was the way he was. (13 RR 45) The court ruled this evidence inadmissible as

hearsay. (13 RR 46)

In closing arguments the State argued that the punishment needed to fit Petitioner. (13 RR 51) The State pointed out that he's an unusual individual. (13 RR 52)

Hines told the jury that he has two daughters, and that if Petitioner had done this to one of his girls, he would want to cut his balls off. (13 RR 55) He asked the jury to make sure his number was not the right number for the community, but the right number for him. (13 RR 57)

8. The Sentencing

The court sentenced Petitioner to 65 years in prison. (13 RR 61; C.R. 107)

9. The Habeas Corpus Proceedings

On April 20, 2022 ,Petitioner filed an application for a writ of habeas corpus pursuant to TEX. CODE CRIM. PROC. art. 11.07 in the 427th District Court in Travis County, Texas advancing three claims of ineffective assistance of counsel. (App. 11)

Petitioner alleged that he was denied the effective assistance of counsel where: 1) he was forced to go to trial with an attorney whom he did not trust, had lost confidence in, and absolutely refused to communicate with; 2) counsel failed to investigate, develop and present evidence of prior sexual abuse by his stepfather, and its effects on him, as mitigating

evidence at punishment; and 3) counsel failed to present exculpatory facts after the inculpatory portions had been admitted by the State. (App. 11)

Petitioner also submitted his pro se memorandum of law setting out the specific facts and legal arguments in support of his claims. (App. 12)

In response to the order from the habeas judge, the Honorable Tamara Needles, Hines submitted an affidavit explaining the reason behind his decision during his representation of Petitioner.

On September 23, 2022, the State submitted its proposed findings of fact and conclusions of law recommending that relief be denied. (App. 2) Petitioner timely objected to the State's proposed findings of fact and conclusions of law.

Petitioner did not receive any notification of the habeas court's ruling, but assumes that it adopted the State's proposed findings of fact and conclusions of law, as the TCCA denied the application without written order and without a hearing on December 21, 2022. (App. 1)

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REASONS FOR GRANTING REVIEW

The state habeas court erroneously held that Petitioner was not deprived of his right to the effective assistance of counsel even though there was a total breakdown in communication

between Petitioner and Hines which prevented Hines from effectively representing Petitioner at trial. Because the TCCA denied relief without written order, this Court should "look through" that denial to the trial court's findings of fact and conclusions of law as the basis for the denial. See Foster v. Chatman, 136 S. Ct. 1737, 1746 n.3 (2016)("[I]t is perfectly consistent with this Court's practices to review a lower court decision-in this case, that of the Georgia habeas court-in order to ascertain whether a federal question may be implicated in an unreasoned summary order from a higher court."); cf. Wilson v. Sellers, 138 S, Ct. 1188, 1192 (2018)("We hold that the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning."); King v. Johnson, 138 F.3d 951, 1998 WL 110056 (5th Cir. 1998)(unpublished)(reviewing the state habeas trial court's legal conclusion under the "look through" presumption when the TCCA denied habeas relief without written order).

The state courts misapplied this Court's ineffective assistance of counsel jurispudence in two ways, and therefore, Petitioner's case deserves review from this Court for two reasons. First, the state court erroneously concluded that Petitioner was not deprived of his constitutional right to the effective assistance of counsel where there was a total breakdown in communication between Petitioner and Hines. However, in the same circumstances, the Ninth Circuit has held

more than once that such a breakdown in communication between an attorney and his client deprives a criminal defendant of his right to counsel. Brown v. Craven, 424 F.2d 1166, 1169 (9th Cir. 1970); United States v. Williams, 594 F.2d 1258, 1260 (9th Cir. 1979). Review of this case is warranted because the Ninth Circuit has decided that these circumstances deprives a criminal defendant of his right to counsel, and this important question of federal law has not been, but should be, settled by this Court. SUP. CT. R. 10(c).

Secondly, the state court erroneously concluded that Hines was not ineffective where he failed to investigate, develop and present crucial evidence of Petitioner's history of being sexually abused as mitigating evidence at punishment. Wiggins v. Smith, 539 U.S. 510, 534 (2013); California v. Brown, 479 U.S. 538, 545 (1987); Ex parte Gonzalez, 204 S.W.3d 391, 399 (Tex.Crim.App. 2006); Hemphill v. State, 2015 Tex. App. LEXIS 2888 *15 (Tex.App.-Houston [14th Dist.] 2015); Lopez v. State, 462 S.W.3d 180, 189 (Tex.App.-Houston [1st Dist] 2015); Shanklin v. State, 190 S.W.3d 154, 165-66 (Tex.App.-Houston [1st Dist.] 2005, pet. dism'd); Lair v. State, 265 S.W.3d 590, 590, 595-96 (Tex.App.-Houston [1st Dist.] 2008, pet. ref'd); Milburn v. State, 15 S.W.3d 267, 271 (Tex.App.-Houston [14th Dist.] 2000, pet. ref'd). Review is warranted because the TCCA's judgment directly conflicts with this Court's well established precedent, as well as numerous decisions from the state courts on the very same issue. SUP. CT. R. 10(b) and 10 (c).

I. The State Courts Erred When They Held That Petitioner's Sixth Amendment Right To The Effective Assistance Of Counsel Was Not Violated Where Petitioner Was Forced To Go To Trial With An Attorney Whom He Did Not Trust, Had Lost Confidence In, And Absolutely Refused To Communicate With.

A criminal defendant has a Sixth Amendment guarantee to the effective assistance of counsel at trial. U.S. CONST. amend. VI. Made applicable to the states by the Fourteenth Amendment. U.S. CONST. amend. XIV. The law governing the effective assistance of counsel was established by this Court nearly 40 years ago in Strickland v. Washington, 466 U.S. 668 (1984).

In order to prevail on an ineffective assistance of counsel claim, this Court's Strickland standard requires that a defendant satisfy a two-prong analysis. The first prong requires that a defendant establish by a preponderance of the evidence that counsel's performance fell below prevailing professional norms. Strickland, 466 U.S. at 687. Under the second prong a defendant must prove that he was prejudiced by counsel's deficient performance. Id. at 694. (Ultimately, the defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

The Tenth Circuit, however, has held that "a complete breakdown in communication between an attorney and client may give rise to a presumption of ineffectiveness." United States v. Soto Hernandez, 849 F.2d 1325, 1328 (10th Cir. 1998)(holding that whatever level of defendant's mistrust of counsel, it "did

not result in a lack of communication between counsel and defendant as to the essentials of defendant's defense, nor did it lead to the breakdown of the attorney/client relationship", so that counsel's assistance was per se ineffective)(citing United States v. Cronic, 466 U.S. 648, 658 (1984)).

Likewise, the Ninth Circuit has held more than once that it deprives a defendant of the effective assistance of counsel where he is forced into a trial with an attorney after there has been a complete breakdown in the attorney-client relationship. Brown, 424 F.2d at 1169 (held attorney was understandably deprived of the power to present any adequate defense on Brown's behalf, where Brown was forced into a trial with a lawyer with whom he was dissatisfied, with whom he would not cooperate, and with whom he would not, in any matter whatsoever, communicate); Williams, 594 F.2d at 1260 ("[T]hat to compel one charged with a grievous crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict is to deprive him of the effective assistance of any counsel whatsoever.").

The state habeas court erroneously concluded that Petitioner's Sixth Amendment right was not violated because there was no "meaningful relationship" between Petitioner and Hines. (App. 2, pg. 11; Conclusion 6) The state habeas court's conclusion fails to address the argument set forth by Petitioner, which was that Petitioner was denied the effective assistance of counsel "due to a total breakdown in communication

between Petitioner and Hines". Petitioner invites this Court to speculate that if there were communication between Hines and himself, at the very minimum, Hines could have prepared Petitioner to testify at punishment to present his mitigating evidence.

The state habeas court, by mischaracterizing Petitioner's claim, used a standard that would transform Petitioner's legitimate claim into a legal fiction. Morris v. Slappy, 461 U.S. 1, 13 (1983)(The Court of Appeals' conclusion that the Sixth Amendment right to counsel "would be without substance if it did not include the right to a meaningful attorney-client relationship", is without basis in law).

Petitioner submitted the portions of the record where Hines made a point of putting it in the record that Petitioner was refusing all visits and would not speak with him. Notably, the TCCA did not reject the trial court's erroneous conclusion that Petitioner argued that he had a right to a "meaningful relationship."; it simply denied relief without written order. Thus, this Court should "look through" that denial to the trial court's findings of fact and conclusions of law as the basis for that denial. Foster, 136 S. Ct. at 1746 n.3; Wilson, 138 S. Ct. at 1192. By that measure, the denial of relief conflicts with this Court's precedent.

This Court should apply the correct "total breakdown in communication standard" and reverse the TCCA's judgment because a denial of counsel violated Petitioner's right to due process of

law and a fair trial. At the very least, this Court should grant certiorari, vacate the judgment, and remand to the TCCA to reconsider the denial of counsel under the proper standard. Cf. Andrus v. Texas, 140 S. Ct. 1875, 1886-87 (2020)(per curiam)(vacating judgment and remanding to the TCCA to address the prejudice prong of an ineffective assistance of trial counsel claim that the TCCA failed to address thoroughly).

II. The State Court's Decision-That Counsel Was NotIneffective For Failing To Investigate, Develop And Present Evidence Of Prior Sexual Abuse At The Hands Of His Stepfather, And Its Effects On Him, As Mitigating Evidence At Punishment-Contradicts This Court's Clearly Established Law, As Well As The Decisions Of The State Courts.

The state habeas court correctly concluded that an attorney's decision not to present particular witnesses at the punishment stage may be a strategically sound decision if the attorney bases it on a determination that the testimony of the witnesses may be harmful, rather than helpful, to the defendant. (App. 2, pg. 12; Conclusion 12) However, the court erroneously concluded that Petitioner was required to demonstrate that any witnesses-called by his attorney in guilt/innocence or punishment-would have allowed him to prevail at trial or resulted in a shorter sentence. (App. 2, pg. 13; Conclusion 13)

Once again, the state habeas court mischaracterized Petitioner's claims and concluded that Petitioner failed to allege any evidence indicating he was insane at the time of the offense. (App. 2, pg. 13; Conclusion 15) The state habeas court's conclusion on this matter does not comport with any

claim advanced by Petitioner. Petitioner argued, specifically, that Hines was ineffective for failing to procure the services of a forensic psychologist or psychiatrist who could have related to the jury how Petitioner's being sexually abused by a man could have affected his behavior at the times in question. (App.12, pgs. 25-26) The state habeas court made no mention whatsoever regarding Petitioner's need for an expert even though during trial the judge himself voiced Petitioner's need for an expert regarding this issue. (13 RR 46)

The state habeas court disregarded the TCCA's decision in Rey v. State, 897 S.W.2d 333, 338 (Tex.Crim.App. 1995)(holding the rule is that if an indigent defendant establishes a substanstial need for an expert, without which the fundamental fairness of the trial will be called into question, Ake v. Oklahoma, 470 U.S. 68 (1985)] requires the appointment of an expert, regardless of the field of expertise).

The state habeas court also disregarded this Court's decision in Wiggins v. Smith, 539 U.S. 510, 534 (2013)(holding counsel's decision to end investigation when they did was not reasonable in light of the evidence counsel uncovered in the social services records-evidence that would have led reasonably competent counsel to investigate further). The records from RRJJC should have led Hines to investigate further into the sexual abuse as mitigating evidence at punishment defense.

Whether it was due to Hines' failure to investigate, or the total breakdown in communication between Petitioner and Hines,

the fact remains that Hines failed to investigate, develop and present this crucial mitigating evidence at the punishment phase of Petitioner's trial. The state habeas court concluded that Petitioner showed no evidence that, had Hines raised the fact issues alleged by Petitioner regarding his abuse as a victim of sexual abuse, the outcome would have been different. (App. 2, pg. 14; Conclusion 18)

This Court has squarely rejected such a notion. California v. Brown, 479 U.S. 538, 545 (1987)(Evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to...emotional and mental problems, may be less culpable than defendants who have no such excuses).

While the state habeas court completely failed to address Petitioner's claim that Hines was ineffective for failing to obtain an expert to relate to the jury the effects that long-term sexual abuse might have had on him, the Fifth Circuit held that such conduct results in ineffective assistance of counsel. Loyd v. Whitley, 977 F.2d 149, 158 (5th Cir. 1992)(counsel held ineffective where defense counsel's decision not to pursue an independent psychological analysis was neither a strategic choice made after investigation nor a strategic choice made in light of limits on investigation).

The state habeas court concluded that Petitioner showed no evidence that had Hines shown the sexual abuse evidence the

outcome would have been different. This decision is at odds with numerous state court decisions which have consistently held that defendants are harmed where juries are prevented from the possibility of considering mitigating evidence. Gonzalez, 204 S.W.3d at 399 (concluding that applicant's mitigating evidence in regards to sexual abuse he endured, taken as a whole, might have influenced the jury's appraisal of his moral culpability); Hemphill, 2015 Tex. App. LEXIS 2888 at 15 (this mitigating evidence "clearly would have been admissible" and "the trial court would have considered if and possibly been influenced by it"); Lopez, 462 S.W.3d at 189 (when defense counsel presents no mitigating factors...to balance against the aggravating factors or contact potential witnesses there is prejudice); Shanklin, 190 S.W.3d at 165-66 (Prejudice exists, in that context, because there is not even a possibility of the factfinder considering mitigating evidence); and Lair, 265 S.W.3d at 595-96 (concluding prejudice is demonstrated where defense counsel's failure to interview or call a single witness, other than appellant, deprived him of the possibility of bringing out a single mitigating factor).

The state habeas court unreasonably concluded that Petitioner had not shown that the outcome would have been different, when in fact a defendant demonstrates prejudice when counsel's lack of preparation deprives him of the possibility of bringing out a single mitigating factor. Milburn, 15 S.W.3d at 271 ("even though it is pure speculation that character witnesses in mitigation would in fact have favorably influenced

the trial court's assessment of punishment", a defendant nonetheless demonstrates prejudice when a counsel's failure to investigate and lack of preparation at the punishment phase of trial deprives a defendant of the possibility of bringing out a single mitigating factor).

The state court decision is so contrary to this Court's and the other courts' precedent that it requires a summary reversal. This court has not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law. Wearry v. Cain, 136 S. Ct. 1002, 1007 (2016)(per curiam)(summary reversal where state habeas court erroneously denied relief on suppression of evidence claim); see also Hinton v. Alabama, 571 U.S. 263, 276 (2014)(per curiam)(summary reversal on Sixth Amendement ineffective assistance of counsel claim); Porter v. McCollum, 558 U.S. 30, 44 (2009)(per curiam)(same); Kaupp v. Texas, 538 U.S. 626, 633 (2003)(per curiam)(summary reversal on Fourth Amendment claim). The state court decision not only rewards Hines for his substandard performance but may also encourage other attorneys to force defendants into trials with them as counsel only to leave them defenseless before the factfinders.

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CONCLUSION

The Court should grant the petition for a writ of certiorari.

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