

22-6789

**ORIGINAL**

Supreme Court, U.S.  
FILED

DEC 28 2022

OFFICE OF THE CLERK

I N T H E

S U P R E M E C O U R T O F T H E U N I T E D S T A T E S

J U A N F R A N C I S C O T U R C I O S P E T I T I O N E R

V S .

S T A T E O F T E X A S R E S P O N D E N T

O N P E T I T I O N F O R A W R I T O F C E R T I O R A R I

T O

C O U R T O F C R I M I N A L A P P E A L S

P E T I T I O N F O R W R I T O F C E R T I O R A R I

J U A N F R A N C I S C O T U R C I O S

3 J E S T E R R O A D

R I C H M O N D , T X 7 7 4 0 6 - 8 5 4 4

P R O S E

# QUESTIONS PRESENTED

- (1) On A April 9,2012 after all parties approved and signed the plea bargain agreement documents,and Hon.Judge Teresa Hawthorne approved and accepted the recommendation for no more than ten years,was the 20 years sentence legal?.
- (2) Newly Graduated Appellate Attorney,Hon.Matthew J. Kita,although very noble intentions,did not raise the issue,because criminal law was not his forte,or because he was bullied?
- (3) The Texas Code Criminal Procedure,article 26.13(a)(2) is very specific,[if] the plea bargain agreement is accepted,and approved by the trial judge all parties are bound by it,including the judge,and it can be attack at any time by the breached party,to enforced his or her part of the agreement at any time,including by Motion of Nunc Pro Tunc,why then the Trial Court,Appellate Court and Court of Criminal Appeals are refusing to honor petitioners pleas ?.
- (4) Once the plea bargain document is executed no changes can be made,unless on appeal,Why the courts accepted trial counsel's untruthful affidavits that petitioner change his mind after April 9,2012 ?.
- (5) There is no indicia that any other plea bargain took place but the one on April 9,2012 back by the R/R page 16 and the plea bargain documents showing the illegal crossed-out or "X" for the ten years,concluding that there was no other,but the ten years recommendation that petitioner agreed why?.
- (6) Petitioner is entitled to his part of the bargain for 10 years and compensation for the two years illegal incarceration is it ?.
- (7) Would this the highest court in this country let this injustices keep going?.

L I S T   O F   P A R T I E S

P E T I T I O N E R

J U A N   F R A N C I S C O   T U R C I O S

T D C J - I D N O .   0 1 7 9 0 0 1 9

FIFTH DISTRICT COURT OF APPEALS

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## INDEX OF AUTHORITIES CITED

### SUPREME COURT CASES:

KERNAN v. CUERO, 134 S.Ct. 4.....05

### FEDERAL CASES:

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Velazquez v. Fayette SCI, 937 F.3d 151(3rd Cir.2019).....07

### Texas Cases:

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Mizell v. State, 119 S.W.3d 804(Tex.Crim.App.2003).....06

Wood v. State, 2017 TEX.APP.LEXIS 8823.....07

### TEXAS CODE OF CRIMINAL PROCEDURE:

TEX. CODE CRIM.PROC ART. 26.13(a)(2).....01

"""".....02

Art.26.13(a)(2).....03

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J U R I S D I C T I O N

Petitioner case affirmed on October 7, 2013"2013 TEX.APP.LEXIS 12443)

IN RE 2014 TEX.CRIM.APP.LEXIS 442

REFUSED ON IN RE Tex.Crim.App.Lexis 448 April 2, 2014

REV.REM on other grounds on ExParte Turcios 2015 Tex.Crim.App.389 June, 3  
2013 and July 29, 2015 F11-70896 & F11-70886

2254 in TURCIOS v.DAVIS, 2018 U.S.DIST.LEXIS 149608 June 7, 2018

Mandamus denied on 2020 TEX.CRIM.APP.UNPLSH.LEXIS 133 Mar, 18 2020

Mandamus denied In re Turcios 2021 Tex.App.Lexis 1317 Dallas Feb.17, 2021

Mandamus denied In re Turcios 2022 Tex.App.Lexis 453 Dallas Jan.24, 2022

Mandamus denied In re Turcios, 2023 Tex.App.Lexis 161 Jan.11, 2023

Mandamus denied on Turcios 83,155-07 Oct.26, 2022

Habeas denied on Turcios v.Lumkin, 2020 U.S.APP.LEXIS 42465 DEC.28, 2020

Motion Nunc Pro Tunc Filed in Trial Court on Feb.2022 no answer.

Motion Nunc Pro Tunc via certified Mail on April 2022 no answer

Motion Nunc Pro Tunc filed in the Dallas Public Defenders Office on  
June 3, 2022 7017 2680 0000 5085 6001 no answer.

I n T h e  
S U P R E M E C O U R T O F T H E U N I T E D S T A T E S

S T A T E M E N T O F T H E C A S E

This case involves multiple allegation of corruption of documents, enforcement of the only plea bargain agreement for ten years, which requires have a new sentencing hearing, and unconditional released of the petitioner from illegal confinement, this matters are determinable from the trial record.

It also raised the issue of illegal confinement for two years which requires this court to assest it for the purposes of compensation.

## STATEMENT OF PROCEDURAL HISTORY

Petitioner was charged by indictment with the offenses of Burglary of Habitation, and Aggravated Assault, causes numbers F11-70896-P & F11-70836-P. On April 9, 2012 petitioner entered his pleas of guilty and judicial confession in exchange for the recommended 10 years maximum, trial judge had a leeway to sentence petitioner anywhere 2 to 10 probation or prison. On April 27, 2012 Hon. Teresa Hawthorne sentenced petitioner to an illegal two twenty year sentences running concurrent, that it was not part of the plea bargain agreement executed on April 9, 2012.

On April 27, 2012 petitioner filed his pro se "Notice of Appeals", but without any attorney present, the trial court assigned an appellate attorney on October 3, 2012 past the time limit for new trial on the basis for a new trial.

The Fifth District Court of Appeals Affirmed the illegal conviction on October 7, 2013.

The illegal sentence was brought up again on October 16, 2019 Hon. Rachel "Rocky" Jones assigned "order of designated issues", the court of criminal appeals denied relief on Feb. 2020 "without written order".

Petitioner then seek a writ of mandamus in the appeals court on December 25, 2021, December 25, 2022, but all denied.

Court of Criminal Appeals on October 26, 2022, again "denied without written order."

Court of Appeals in Dallas Denied again on Jan. 11, 2023



IN THE  
SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO TURCIOS  
( PETITIONER )

V S.

THE STATE OF TEXAS  
( REPONDENT )

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PETITION FOR WRIT OF CERTIORARI

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COMES NOW, Juan Francisco Turcios,proceeding pro se seeking a writ of Certiorari,petitioner who is under illegal incarceration,and restrain of liberty by the State of Texas,since September 13,2021,petitioner respectfully request audition to explain as follows.

I

(1) Petitioner,enter the 203rd J.D.C. Dallas County TX. On April 9,2012 after adverse negotiations enter a guilty plea and judicial confesion with Dallas County A.D.A Ms.Chris Hawkins,in exchanged for the recommended 10 years maximum,it was up to the judge if probated or prison time be assessed this fact is memorialized in both R/R page 16 volume 2,and as well as the plea bargain agreement documents (included herein).

(2).On April 27,2012 Hon.Judge Hawthorne violated the plea bargain agreement when she sentence petitioner to other than the agreed ten years,contrary with Tex.Code Crim.Proc.art.26.13(a)(2),as well as the United States and Texas Constitutions Due Process Clause ,on appeal the State distort,and conceal the fact of the plea bargain for 10 years.

(3).Petitioner newly graduated appellate attorney was bullied by the State as to the facts of the plea bargain agreement,and although he specialized in civil not criminal matters the plea bargain agreement was overlook.as well as the untruthful fact that petitioner pleaded guilty for the ten years,but later changed his mind,whereas no record of it.

contrary with well settled State Law, and "Texas Code of Criminal Procedure article 26.13(a)(2). as illustrated in the precedent caselaw below".

MOORE v. STATE, 295 S.W.3d 329 (TEX. CRIM. APP. 2009) <at-332> The only proper role of the trial court in the plea-bargain is advising the defendant whether it will "follow or reject" the bargain bargain between the State and the defendant. TEX CODE CRIM. P. art. 26.13 (a)(2) ("the court shall inquire as to the existence of any plea bargaining between the State and the defendant and, in the event that such agreement exist, the court shall inform the defendant whether it will follow or reject such agreement in open court, and before any finding on the plea."), if the trial court accepts a plea-bargain agreement, the State may not withdraw its offer. Bitterman v. State, 180 S.W.3d 139, 142 (TEX. CRIM. APP. 2005) (citing Ortiz v. State, 933 S.W.2d 102 (TEX. CR. APP. 1996) if the trial court rejects the plea bargain agreement, the defendant is, a matter of right, allowed to withdraw his guilty plea, and the State may withdraw its offer. TEX. CODE CRIM. P. art. 26.13(a)(2) ("Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere.")

...the trial court commits error if it unilaterally adds un-negotiated terms to a plea-bargain agreement. Papillon v. State, 908 S.W.2d 621, 624 (Tex. App. - Beaumont 1995, no pet) (error occurred "when [the trial court] inserted additional, non-negotiated terms into the negotiated plea bargain between the State and appellant, and then made acceptance or rejection of said plea bargain contingent on whether or not appellant complied with said additional, non-negotiated terms.")

WRIGHT v. STATE, 158 S.W.3d 590 (TEX. APP, SAN ANTONIO 2005) <at-593> Trial judges have wide discretion in determining whether on not to accept a plea bargain agreement. State ex rel. Bryan v. McDonald 662 S.W.2d 5, 9 (Tex. Cr. App. 1983) (en banc). Once expressly approved by the trial court in open court, however, a plea bargain agreement becomes a binding contractual agreement between the State and the defendant. Ortiz supra <at-594> This means that once approved, by the trial court, the defendant may insist on the benefit of his

plea agreement with the State. Blanco v.State,13 S.W.3d 218,220  
(Tex.Cr.App.2000(en banc)),if such agreement with the State can be  
enforced,the defendant is entitled to withdraw his plea.Perkins  
v.Court of Appeals Third Supreme Judicial Dist.of Tex.738 S.W.2d  
276,283-84(TEX.CRIM.APP.1987)(en banc)(holding the record clearly  
reflected that the court accepted plea bargain's cap of twenty-  
five years<at-595>The trial court has a "ministerial mandatory,  
and non-discretionary duty"to follow the plea bargain agreement  
once it has been approved by the court.Perkins,738 S.W.2d at/285  
...Wright has already served a substantial portion of his  
sentence,under the guilty plea,the appropriate remedy is specific  
preformance .See Gibson v.State,803 S.W.2d 316,318(TEX.CR.APP.19-  
85).

In petitioner's trial ,pleaded guilty for the recommended  
10 years the trial court the same day signed the document,by  
doing so it bind it self and those of the parties,see R/R,Vol.  
Two Page 16,although is a form of inquiry from Judge Hawthorne  
but still an acknowledgement.

[THE COURT:] State have anything at this time?.

[MS HAWKINS:] I'd just like it to be on the record that my of-  
fer is for 15 years TDCJ.

[MR.JOHNSON:] I think you put on the plea bargain ten.

This copied with the plea agreement documents is unrefutable  
proof that the plea was standing.

Conflicting statement from appointed defense counsel Mr.John-  
son only proved that the State of Texas try to deceived  
petitioner,when the illegally crossed-out the plea recommend-  
ation for ten years,but more importantly no one has acknowle-  
dge the crossed-over as legal,as petitioner has been trying  
to correct this illegal act for the past 4 years,but because  
his comming pro-se no one wants to listen or help.

This Honorable Court found in many cases ,and remanded succe-  
ssfully with instructions,in petitioner's case ,this is  
not a matter of right but illegal confinement and multiple  
constitutional violations,as the State highest court The  
Court of Criminal Appeals ,has denied without a written  
order for SEVEN TIMES,,here lately in October 26,2022 WR-83,1  
55-07 ,and the Directs Appeals Court,directly above the  
trial court ,three times,twice in the Federal District  
Court,and twice in the FIFTH CIRCUIT.

Texas law require the trial court to correct,as a matter of right a void

sentence, as shown on the above caselaw, however, petitioner as matter of right filed 5 total "Nunc Pro Tunc" to correct the void sentence, directly in the trial court, nevertheless, no response has been giving back, not even when petitioner filed a motion with the Dallas Public Defender's Office, for them to please present the motion petitioner filed (enclose or entrust) with their office.

5. The Dallas Public Defenders was provided it with a S.A.S.E. to be return to petitioner in the event that-unable to presented to the court, but none were ever returned to petitioner.

6. Although the Honorable Judge Hawthorne, is no longer the presiding judge for the 203rd District Court, petitioner, filed or presented a second successive art.11.07 § 4, the new presiding judge Honorable Rachel "Rocky" Jones, order the State to hold a (ODI) order of designated issues, as the same issues illegal punishment which is 20 years instead of the ten, judge Jones found petitioner's grounds "Controverted, previously unresolved facts material to the legality of applicant's confinement existed" dated October 16, 2019.

7. Petitioner called upon this court for "JUSTICES" as, this is not only illegal but fraudulent confinement, is shame, some of this judges in Texas, as the Court of Appeals for the Fifth District, wrote an opinion, in which Judge Robbie P. Partida-Kipness 2022 Tex.App.Lexis 453, Opinion as follows partially "Turcios seeks a writ of mandamus directing the trial court to issue a nunc pro tunc judgment [reducing] his sentence to ten years imprisonment based on a purported plea agreement. We deny the petition."

U.S. Supreme Court find that once a promise has been given, in a form of recommendation by the Government as a plea bargain, the Government must keep its promise, in petitioners case the Government does not acknowledge this, Texas is a rude State, more than any other State when it comes to convict the innocent, even when the innocent "pleaded guilty in fear of her shed punishment, with proof, signed documents, and evidence."

In Texas the criminal system is totally broken, as even when you come up for parole, the Texas Board of Pardons and Paroles denied you parole, even when you show them proof that "hey I pleaded guilty for ten years."

KERNAN v. CUERQ134 S.Ct.4 (2017)(Overview)[1]=The appellate court erred when it held that federal law as interpreted by the U.S. Supreme Court clearly established that specific performance of the plea agreement after it was allegedly breached, by the State's motion to amend the complaint was constitutionally required because no holding of the Supreme Court required the remedy of specific performance under the circumstances.

8. Petitioner's case has no caselaw to base on as he looked for "Illegal incarceration" but found none, only the international case of "Nelson Mandela" in South Africa.

Petitioner includes in this emergency writ the following documents as evidence:

(a) Copies of two plea bargains agreement front and back, copy of the reporters record page sixteen demonstrating the member of his trial acknowledging the ten years, a copy of the new 203rd Court acknowledging the un-resolved illegal sentence,, two un-number pages from the State's response to the Court Criminal Appeals, acknowledged petitioner's innocence, and blaming him not trial defense counsel for rendering good service in making sure petitioner went to prison, first page of the Court of Appeals Fifth District, rendering petitioners pleas as OPEN, without plea bargain,, in Index from the appeals court recognizing, "there is two plea bargain documents."

9. Petitioner's due diligence found that "Open Plea" does not render a case being without a recommendation, as shown below:

HARPER v. STATE, 567 S.W.3d 450 (TEX. APP. 2nd Dist. Fort Worth 2019)  
<at-454>DEFINING AN "OPEN PLEA". The Tyler Court of Appeals, has remarked that "[t]he term 'open plea' is an imprecise legal term of art. In some instances, it has been defined to involve a plea where charge bargaining, but not sentence bargaining, has occurred." ...The common denominator of both types of "open plea" is that the defendant pleads guilty without an agreement about the precise punishment he will receive—that is, without a sentence bargain (as in for example, pleading guilty in exchange for a five-year term. The two types of "open plea" (as cases use the term

differ, though, in that sometimes the guilty plea itself is a product of a plea bargain, and sometimes is not. So unsatisfyingly although the term "open plea" accurately conveys that a defendant's precise punishment is unresolved, it simultaneously obscures<sup>at-455</sup> whether the guilty plea itself resulted from a charge bargaining.

(10) Petitioner submit in 2019 an additional art.11.07§4 raising the illegal sentence as I stated before it was sweep under the rug, now Texas Laws specifically states that an illegal sentence outside the legal minimum, and maximum, can be attack at [any]time in "ane court", as petitioner did he send a to tal of "Nunc Pro Tunc" motions to the trial Court, Four writ of Mandamus to the Direct Appeals Court, and 3 writ of mandamus to the Court of Criminal Appeals, an one article 11.07 attacking the illegal sentence,, this was raised in the U.S. 2254(d), and the Fifth Circuit, in which the Fifth Circuit denied reviewing the illegal-sentence by saying. "Written by Hon. Gregg Costa, United States Circuit Judge." " \*2\* That his sentence was void. Regarding the § 2254 proceeding, Turcios asserts that the State failed to submit a complete state court record, as it was required to do. Turcios's motion to supplement the record on appeal is denied. See Theriot v. Par. of Jefferson, 185 F.3d 477, 491 n.26 (5th Cir.1991). His motion for leave to file a supplemental COA motion supporting brief are GRANTED."

(11) Petitioner points out that Hon. Gregg Costa is unmoved by any inmate writ or motions as he is only in behalf of the State of Texas This fact can be appreciated in the many pro se's applications the Judge review, they all get denied, Deny, or Dismissed.

(12) The State of Texas "if you are an attorney" an not pro se shows, that an illegal sentence outside the legal minimum or maximum can be attack<sup>ck</sup> at at any time after the illegal execution of it. As shown next.

Mizell v. State, 119 S.W.3d 804 (Tex. Crim. App. 2003).<sup>at-806</sup> "A sentence that is outside the maximum or minimum range of punishment, is unauthorized by law and therefore illegal." A defendant may obtain relief from an unauthorized sentence on direct appeal or by a writ of habeas corpus. Traditionally, the State could seek mandamus relief to rectify an illegal or unauthorized sentence. In these instances, the State could even seek a resentencing by filing a motion to reopen punishment in the trial court, long after that court had lost plenary jurisdiction over the case. There has never been anything in Texas law that prevented any court with jurisdiction over a criminal case from noticing and correcting an "illegal sentence."

<at-807>Even before the State obtain a statutory right to appeal an illegal sentence, the courts of this State could always take notice of an illegal sentence when the defendant appealed on any basis. Ex Parte Hill, 632 S.W.3d 547 (Tex.Crim.App.2021) : Ex Parte Parrott, 396 S.W.3d 531 (Tex.Crim.App.2013); Ex Parte Pringler 2020 Tex.Crim.App.Unpub.Lexis 148; Hestand v.State, 2019 Tex.Crim.App.Unpub.Lexis 646 State v.Fischer, 128 Ohio St.3d 92 (Sup.Ct.Ohio,2010)

(13).Petitioner finds hard to believe that even the State of Ohio finds the Texas Court of Criminal Appeals credible in their "Law Assumptions" however, the C.C.A. does not follow its own precedent case laws when is redacted by an inmate more less in prison.,but see the following.

Wood v.State 2017 Tex.App.Lexis 8823 <at-14>Consequently, the trial court's sentence of life imprisonment in this case was "illegal, unauthorized, and void." Sierra, 501 S.W.3d at-185 (holding that the trial court's sentence of thirty years imprisonment was illegal, unauthorized, and void where the crime charged in indictment was second-degree felony [815] which carried maximum sentence of twenty years imprisonment) (Conclusion) reversed and remand the case for assessment of punishment.

(14).Petitioner ,consequently can show "bias and prejudice" by Texas Judges no to grant him relief,when he first show when and where he's constitutional rights were violated,as it can be appreciated in the next case.

Velazquez v. Fayette SCI, 937 F.3d 151 (3rd.Cir.2019). <at-153>Actions speak louder than words, but both speak. <at-155>This is the first time that a court will consider these errors by trial counsel, and it comes nearly a decade since Velazquez was sentenced. Some explanation is warranted.

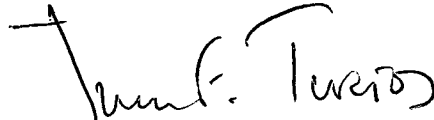
The procedural framework explains the timing. Notably, a criminal defendant who is convicted in State court and who challenges his conviction or sentence under 28 U.S.C.2254 is required to first do so on direct appeal that is ,up through the state court system until no further appeal can be had.If successful on direct appeal, the defendant then has to exhaust the State's collateral appeal process pursuant to the Post Conv.Relief Act ("PCRA"), 42 Pa.Cons.Sta. §§9541-46. This process begins with a defendant's filing a petition to a PCRA court and proceeds in the same manner as a direct appeal, ending when no further appeal can be had, Then, and only then, may a defendant file a 28 U.S.C.2254 petition like the one here. See 28 U.S.C. § 2254(b)(1). Needless to say, this process takes time. The hope is that the state courts will identify any errors before a federal court is called upon... This hope did not manifest here.

(15).Unlike the luck of having an attorney who saw the errors in the case above, and the Circuit Court was very lenient, petitioner's case in the Fifth Circuit was anything but the opposite, as mentioned before, the Circuit Judge, Judge Costa saw ,and notice the illegal sentence, but instead of relief ,he turn down any opportunity to being lenient.

#### CONCLUSION

Petitioner only hopes this court leniency, and grant relief from "illegal confinement" and any other relief petitioner

to by the gesture of this the highest court in this beautiful  
country who everyone loves, so petitioner request for relief.

A handwritten signature in black ink, appearing to read "Juan F. Turcios". The signature is fluid and cursive, with a large initial "J" and "T".

Respectfully Juan Francisco Turcios  
"Illegally Confine in Texas"  
TDCJ ID 1790019 Jester III