No. 22-7169

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Scott Charles Teevan — PETITIONER
(Your Name)

vs.

Bobby Lumpkin, Dir. TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Scott Charles Teevan TDCJ#1114385
(Your Name)

French M. Robertson, 12071 FM 3522
(Address)

Abilene Tx. 79601
(City, State, Zip Code)

325-548-9035
(Phone Number)

QUESTION(S) PRESENTED

1. Will, this court resolve a circuit split regarding the Standard of Review used for actual innocence?
2. Should this court grant habeas litigants the ability to to demand the written justifications for the denial of habeas which is kept secret from them by the Texas Court of Criminal Appeals?
3. Could this court resolve an issue of due process regarding the appointment of counsel, for a specific statute and body of law currently in place before the Texas courts?
4. Can this court reslove the multiple issues of perjury that took place in the trial court to obtain his conviction?
5. How is it possible that three eyewitnesses to the event which makes up the body of the conviction before the court, were not revealed to the defense nor were they brought before the trial court to testify. Further, was this more important if their testimony was known pre-trial to be exculpatory?
6. Was trial counsel ineffective for not investigating the seyewitnesses?
7. Was trial counsel ineffective for not obtaining an expert to learn the facts about the pistol used in trial.

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

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STATUTES AND RULES

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 D to the petition and is

[ ] reported at Not applicable; 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[X] is unpublished.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 B to the petition and is

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[ ] is unpublished.

[X] 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 Not applicable; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the Texas Court of Criminal Appeals court appears at Appendix A to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was 11-30-22.

[ ] 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: Jan 12 2023, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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 1-11-17. A copy of that decision appears at Appendix A.

[ ] 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

1. The Sixth Amendment of the U.S. Constitution. The Fifth and Fourteenth Amendment of the U.S. Constitution.

2. Rule 10 of the Rules of the United States Supreme Court. Which specifically cites the notion that "(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter!"

3. The Fourth Amendment of the U.S. Constituion.and

STATEMENT OF THE CASE

GROUND ONE; Teevan argues that he is acutually innocent of the crime of attempted murder of a lawienforcement officer.

The basis of this claim can be found in the trial court record, Deputy Turman testified that Teevan attempted to kill him by repeatedly dry firing a Talon 9mm at Turman's head. Later Teevan learned this was impossible because the pistol is a hammerless single action semi-automatic, which is incapable of doing such an action.

Additionally, there were three eyewitnesses that were mentioned during trial. Trial counsel, did not investigate nor did he call the witnesses to the stand, Teevan argues counsel was unaware of their existance. Because, the ideas were mentioned in trial controlling case law of the Fifth Circuit specifically the case of Handcock v. Quarterman, 906 F.3d 387 (5th Cir. 2018). As it defines **newly discovered evidence** in such a fashion as to exclude all evidence applied or misapplied in trial. The case in dicta admits that it's interpretation is a split in the Circuits.

Last, in this section Teevan asserts that there are thousands of citizens who apply for writs of habeas corpus nation wide and while it is true that not all apply under actual innocence, some studys show that over twenty thousand a year argue that exception to the subsequent writ doctrine and over the next ten years it may be as many as one million. As such the court should hear this case and reconcile the differences in the Courts of Appeals.

GROUND TWO; Teevan claims that his rights were violated by elements of the Texas habeas process which have denied him the ability to

to have and attack directly the denial of his habeas corpus due to their refusal to share the written justification for denial. At the time of the initial habeas and thereafter, it was unknown to the public at large that a "writ staff memorandum" even existed or that Texas was not following procedure about the decision making process under law. Teevan argues this robbed him of substantial rights under the law and impacted his ability to file a habeas corpus.

GROUND THREE; Teevan claims that he should have been appointed counsel and experts on his application for writ of habeas corpus under the "junk science" law of Texas and to fail to do so violated equal protection and other constitutional provisions.

GROUND FOUR: Teevan asserts that there were numerous incidents of perjury in his trial and such was the nature of these lies as to directly impact the outcome of trial. Teevan insists his right to a fair trial was violated as well as equal protection impacted.

GROUND FIVE; Teevan argues that material relevant evidence was withheld from the trial counsel David Moormon such as to constitute an error under Brady v. Maryland. Specifically eyewitnesses whose testimony would have demonstrated to the jury that Deputy Turman was not telling the truth. To have denied exculpatory witnesses during trial clearly impacted Teevan substantial rights.

GROUND SIX; Teevan also argues that trial counsel was ineffective for failing to investigate the question of eyewitnesses that was raised during trial. Trial counsel was not diligent in learning of the potential exculpatory testimony which would have shed negative light upon the testimony of Deputy Turman and solidified the

testimony of Teevan who insisted he did not attempt to shoot the Deputy.

GOUND SEVEN; Teevan arges the violations of his rights to equal protection under the "junk science" writ law in that the trial court failed to appoint experts to assist him develope arguments and adduce evidence under the "junk science" law.

REASONS FOR GRANTING THE PETITION

GROUND ONE: Teevan argues that he is actually innocent of the alleged crime of attempted capital murder of a law enforcement officer. He asserts that his rights under the Due Process and equal protection aswell as the right to a fair trial protected under the U.S. Constitution's Fifth, Fourteenth and Sixth Amendments. Further, Teevan asserts that he was only able to obtain evidence of these after trial and obtaining such was exceedingly difficult, as such it is newly discovered. However, there is a split in the circuit courts regarding the nature of such evidence. In the Honorable Fifth Circuit court of appeals, Teevan has been denied a review on the merits because in this circuit, any mention of the evidence precludes this evidence being used as "newly discovered".

A
FACTUAL BACKGROUND

Petitioner Scott Charles Teevan (Teevan herein) was tried in the 411th Judicial District Court of Trinity County Texas under cause no. 6503. He was represented at trial by David Moorman. Teevan was senteced to fifty years.

The indictment in this case alleged that Deputy Shane Turman was transporting Teevan to another jail facility when he attempted to take control of the vehicle, then after Deputy Turman brought the vehicle to a stop, Teevan attempted to shoot Turman inside the patrol car and after Turman exited the vehicle Teevan again attempted to shoot Turman.. Turman testified that Teevan attempted to

to shoot him outside of the vehicle. SEE RR 3, page 53-62.

During the trial Deputy Turman admitted that he had spoken to three eyewitnesses and made statements based upon their recollections immediately after the incident. However, these statements were not made available to the defense and when they were discussed in trial no effort was made on the part of the defense, by Mr. Moorman to obtain the statements or interview the witnesses. SEE RR vol. 3, pages 86-87.

For years after his initial writ of habeas corpus 11.07 was submitted to the trial court Teevan attempted to learn the names of the witnesses writing to the court, Sheriff, D.A. and any one else who would listen. Because, one thing Teevan know he did not attempt to shoot the Deputy. That was a fact. Finally, he recalled the name of a specific woman Deputy and wrote to her directly she in turn sent him copies of the interviews. SEE EXHIBIT ONE. At least, he believes it was her as the documents simply arrived without a letter or acknowledgement.

Teevan learned at the law library that it was important to obtain affidavits from the witnesses as the interviews

Teevan also found a friend who was willing to put up $6000.oo for an attorney to assist him on the writ of habeas corpus. Hired on 06-03-2013, Mr. Robert Jones became ill and did not live up to the agreement to present the writ of habeas corpus in court. Moreso his office gave Teevan the impression that there was some progress on the action. On 01-13-2016, Mr. Jones was fired and Teevan decided to file a successive writ based on the evidence he had accumulated. This was denied under WR-60, 915-03 dated 01-

11-18.

It is important to note that the claims were not denied but rather "dismissed" which according to Ex Parte Torres 943 S.W.3d 469 (Tex.Crim.App. 1997) means "For purposes of determing whether petitioner for habeas corpus is barred by final disposition of initial application challenging conviction "denial" signifies that court addressed and rejected merits of particular claim while "dismissal" means that court declined to consider claim for reasons unrelted to claims merits." This distinction will be very important in the next point of error.

Teevan admits that his A.E.D.P.A. one year time limit has passed and argues instead that it should be waived due to his actual innocence. He argues that his failure to previoudly bring this to a federal forum was caused by the difficulty in obtaining the evidence. And, he was prejudiced by in this effort by the delays explained below. But asserts a claim under Schlup v. Delo, 115 S.Ct. 851 (1995), and points to headnote #3 "Without any new evidence of innocence, even the existence of a concededly meritorious Constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred habeas claim; however if the habeas petitioner presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial, unless the court is also satisified that [the] trial was free of nonharmless constitutional error, petitioner should be allowed to pass through the gateway and argue the merits of the underlying claims in a successive habeas petition." Teevan argues that the affidavit of his previously unknown eyewitness which supports his claim that there was not

lp

an attempt on Deputy Turmans life, as evidence by the affidavit of the former gunsmith and Federal Firearm Licenseeholder De Moss.

Further, this evidence is "newly discovered" in some federal circuit courts but not others. Teevan asserts that his prior argument while not artful did present in the memorandum of law a body of the that shows that there is a vast mechanism that prevents the impoverished, incarcerated pro se litigant from obtaining evidence in general and this evidece specifically and such was created by the state of Texas and the Federal Legislature and such is by it's very nature a barrier to obtaing evidence.

B

PROBLEMS OF OBTAINING THE EVIDENCE

In the Memorandum of law submitted with the application for writ of habeas corpus §2254 in the USDC, Teevan on page 1 asks the court to take judicial notice of the extreme difficulty prisoners have in obtaining brady material "or in truth any evidence at all". Teevan argues that prisoners suffer from a form of "incapacity" when it comes to obtaining evidence.

For example, the incarcerated are incapable of using the Freedom of Information Act 5 U.S.C.A. §552.00 et seq. Because under subpart §552.028 titled "Request from an Incarcerated Individual" it states "a governmental body is not required to accept or comply with a request forminformation from (1) an individual who is imprisoned or confined in a correctional facility..." There are similar provisions under the Texas Public Information Act codified in the Texas Government Code §552.020. Whichprevents the incarcerated from obtaining evidence.

The incarcerated are incapable of useing pre-trial interrog-

atory discovery to locate witnesses or force any individual to answer questions about the evidence involved in a conviction, or judicial proceeding. "Regarding the Texas Rules of Civil Procedure, Rule 202 (f) (1,2) which states in part "Inmates action to depose judge who presided over his criminal trial to obtain evidence, to nullify his conviction could only be undertaken via habeas corpus provision that was criminal in nature, such that inmates desired relief was unavaiable to him." In re Reger, 193 S.W.3d 922 (Tex.Amarillo 2006). The same is true of the Federal corollary in the Federal Rules of Civil Procedure, Rule 27.

The Texas prisoners are generally speaking incapable of, generally speaking hiring lawyers or private investigators or obtaining loans to cover such costs. As Texas does not pay it's prisoners for their work. See Ali v. Johnson, 259 F.3d 317 (5th Cir. 2013). Most legal aid groups will not assist prisoners who are in TDCJ. Innocence Projects are generally not interested in any case where there is no testable DNA. Which all amounts to the same estimation, without financial resources from friends and family the incarcerated in Texas have no means to prove their innocence. or even obtaining assistance in that path.

As this applied to Teevan he has averaged less than 60 dollars on his inmate trust fund through out his incarceration, moreso he is forbidden by the agency and policy from earning money or running a business through which he could obtain money to hire representation or locate iwtnesses.

In recent times Teevan has found some individuals who unself-

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ishly gave of their time and money to help locate ONE of the three eyewitnesses in an effort to help Teevan file a successive writ in the state and later the federal court.

However, Teevan points out that he has tried to obtain assistance through the Innocence projects and various charities. Each has in turn denied him.

C

SPLIT IN THE CIRCUIT COURTS

Teevan aruges that this Honorable Court should hear his case to resolve a split in the courts and re-affirm it's commitment to the ultimate question of whether or not guilt is the question which is central to the criminal justice system.

Teevan points out that actual innocence is triggered by only one idea the ability to prove one did not commit the crime. In this case, Teevan argues that the crime alleged hinged on one idea and that was that the gun would repeatedly dry fire. See RR vol 3 at page 86-87. Where the Deputy testified that the gun created a "snapping" sound when held close to his head. "As I was releasing my seat belt I could hear the gun snapping fairly close to my head." The ing, gerund form of the word, is a crucial issue in the case as the state used it to prove intent to kill.

Questions of actual innocence have a constitutional dimension, see Herrera v. Collins, 113 S.Ct. 853 (1993) and Schlup v. Delo, 115 S.Ct. 851 (1995).

Because the U.S.D.C. concluded that none of the evidence that supports Teevan's claim of actual innocence qualified as "newly discovered" under prior case law, Handcock v. Quarterman, 906 F.3d

387 (5th Cir. 2018). The application of the evidence to the facts should be discussed first.

Teevan avers that the ideas about the gun being incapable of repeatedly dry firing was asserted falsely during trial by the Deputy Shane Turman in his testimony. This was supported by the Sheriff who made a video and showed the gun being repeatedly being fired. This supporting testimony of the Sheriff not only convinced the jury that the gun was able to be dry fired. Which means that it would repeatedly snap on an empty chanber without a bullet in place. But it also convinced the trial counsel and defendant, now petitioner Scott Teevan. In fact, at the trial level the question was never asked, "could the gun do that?" because neither trial counsel Moorman nor Teevan had a background in firearms, it seemed reasonable that if the gun could fire multiple times when loaded, then it could repeatedly "dry fire". Which was simply not true.

Further, in Texas law enforecement sytems Sheriffs are often considered by the courts to be "experts" in the use of deadly force and firearms. See James v. State, 425 S.W.3d 492 (Tex.App. Hou. [1st Dist.] 2012) where a sheriff provided testimony about whether or not a BB gun could be considered a deadly weapon. In Teevan's trial the Sheriff did not qualify himself as an expert nor did the defense counsel challenge his ability to do so, instead he simply provided what seemed to be relevant testimony about the ability of the fire arm. Teevan asserts that the function of the firearm was not discovered until much later, when he consulted with a firearm expert who was in prison. This person an amature gun smith and a federal firearms license holder knew immediately that the Deputy and the Sheriff lied about the internal mechanism of the gun.

Because the gun would not repeatedly dry fire, the affidavit which comes from the one eyewitness that never was brought to court, actually supported Teevan's assertation that he was innocent of the attempted murder charge.

The conclusion and dicta in Handcock ibid makes it clear that there exists a split in the federal circuit courts regarding what constitutes "newely discovered" evidence and what does not. This case make it clear that any mention of the evidence even tangentially such as the discussion and admission that eyewitnesses existed. Was in essence enough to deny Teevan use of their affidavit in a later habeas proceeding. This idea clashes with the Nineth Circuit and others which simply holds that it was not used in trial, then it is newely discovered.

In fact, this strict idea was clarified by the Fifth Circuit in a later opinion which helped to eliminate many claims of actual innocence, when it held "Evidence does not qualify as "new" under the Schlup actual-innocence standard if "it was always within reach of [petitioner's] personal knowledge or reasonable investigation." qouting Moore v. Quarterman, 534 F.3d 454 (5th Cir. 2008)

Considering this idea, then if this had been the law of the land when Schlup applied for a new trial under actual innocence, he would have been denied!

The Schlup v. Delo case centers around a murder in a Missouri prison, where the petitioner insisted "that the state had the wrong man!" "He relied heavily on a videotape from a camera in the prisoner's dining room. The tape showed that Schlup was the first inmate to walk into the dining room for a noon meal, and that he went through the line and got his food. Approximately, 65 seconds

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after Schlup's entrance several guards ran out of the dining room in apparant response to a distress call...Twenty-six seconds later O'neal ran into the dining room, dripping blood..." Schlup page 855. The question should arise about "was this evidence developed and argued in trial?" Chief Justices Rehnquists dissent provides a partial answer, when he states "The jury cinsidered this conflicting evidence determined that petitioner's story was not credible..." The backstory of the case is clear, the evidence exactly as in Teevan's case was mentioned not developed and argued in Schlup's jury trial. So, had Hancock been the law of the land, Schlup could not have prevailed.

As such the Handcock case contradicts the very case it is said to define Schlup. Specifically, Teevan argues that Schlup must have been aware of the cameras and demanded the tapes from the very onset of the accusations but just as in Teevan's case trial counsel made no effort to learn the facts of the events.

Clerly, the Circuit Split made a difference to Teevan, as it denied him review. But, this court has repeatedly stated that the main job of the Supreme Court to to harmonize splits in the Circuit courts of the United States. "One this court's primary functions is to resolve "important matter[s]" on which the counts of appeals are in conflict Supreme Court Rule 10(a)" Thompson v. Keochane 116 S.Ct. 457 (1995). This of course, begs the question are there sufficient numbers who are impacted by this split to merit the scarce and limited resources of the nations highest court to spend the time resolving and debating this issue.

Teevan argues that because there are thousands perhaps millions of citizens now claiming innocence and filing appeals asserting

actual innocence.

D
IMPORTANCE OF ACTUAL INNOCENCE

The heart of this petition is based around one simple idea the police officer lied. While on the surface it would appear that no police officer has reason to lie there is a bumper crop of information that says police lie all the time to advance their situation or to advance their careers. The National Registry of Exonerations (NRE herein) lists thousands of exonerations, and if one includes the "group" exonerations it brings the total to 3271 people who have been exonerated. The individual total being only 2,161 souls. The 1,110 people liste in the report on group exonerations is not a part of the standard data base. Instead the database lists only individual exonerations. This seems skewed but a report about group exonerations explains the discrepancy. But this seriously under reports the number of people who are in fact convicted due to police misconduct. For example, one study by Samuel R./Gross and Micheal Shaffer reported on 340 exonerations occurring between 1989 and 2003. It showed eyewitness misidentifications as the leading cause of wrongful convictions. Factoring in the 75 wrongful convictions from group exonerations in which the defendant was provably factually innocent, which occurred during that time period, changes the leading cause of wrongful convictions to police perjury. That is because police perjury was the cause of every one of the 75 factually innocent group exonerations!

In the study titled "Police Misconduct as a Cause of Wrongful Convictions"by Russell Covey in the Washington Law Review,

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it was determined that the group from Tulia Texas included 37 exonerees who were factually innocent based on information that was in the court records. And, according to the records of the Texas Department of Public Safety all of the Tulia exonerees were convicted. A study by the Cato Institute's National Police Misconduct Reporting Project showed that, in any given year, around 1 percent of all police officers engaged in misconduct. This seems like a low rate until one considers that a study by the Wisconsin Innocence Project showed that police misconduct was a factor in up to 50 percent of all DNA-based exonerations. Moreso, a study by Adam Dunn and Patrick J. Caceres published in Policy Matters attempted to establish a better estimate of police misconduct rates using local agency data and community surveys in Oakland, California. The report noted that the National Police Misconduct Statistics and Reporting Project a nonprofit that uses mideia reports to generate it's statistics showed an average police misconduct rate was much greater. However, based on its breakdown for Oakland, a rate of 1.1 per 10,000 Oakland citizens was indicated.

The study used Oakland Citizens Police Review Board complaints to determine that the rate was 2.6 allegations of police misconduct per 10,000 Oakland citizens racially broken to a rate of 5.3 for blacks, 1.3 for whites, and 1.1 for all others listed. Which initially may seem small until one considers the amount of prison time one is talking about. Almost all of the members of the Exoneration Registry spent at least 22 years in prison for a crime they did not commit.

A more sobering look was the study titled "Police Integrity Lost: A study of Law Enforcement Officers Arrested." Funded by a grant from the U.S. Department of Justice, used media reports and court records to show that there were at least 6,724 arrests involving 5,545 state and local law enforcement officers between 2005 and 2011 detailing the facts of crimes by police officers. The officers were employed by 2,529 different agencies in 1,205 counties and all 50 states and the District of Columbia. This represents an arrest rate of 0.72 per 1000 officers or 1.7 police arrests per 1000,000 U$S. residents.

The msot common arrest charges break down to 13 percent for simple assault, 12.5 percent for DWI, 8.5 percent for aggravated assault, 5.2 percent for forcible fondling, and 4.8 percent for forcible rape. About half of the police officers victims were children. Police officers lost their jobs in 54 percent of the cases. A cross check with civil rights complaints filed agaisnt the officers prior to the incident that led to their arrest.

These ideas are crucial when one considers that Deputy Shane Turman is no longer a law enforcement officer, but rather an inmate himself and a registered sex offender.

For reference to these study[ies] at innocenceproject.com, reason.com, www.lawlumich.edu with links to other cites. Generally most information at National Registry of Exonerations 2020 Report.

Based on the above and the idea that most innocent persons will seek exonerations, it is possible to show that

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one person in a thousand could state a colorable claim, then the standard of review could potentially impact the lives of over two thousand citizens each year. While this estimate from the NRE seems low based on the above issues, one should also consider that the claims over ten years provides the potential for over two hundread thousand claims of actual innocence based on future arrest record projections. See National Institute of Justice.gov.

If one considers the total number of citizens who argue the idea of actual innocence on state writs as well as federal then the potential for those numbers to dramatically increase substantial. In Raysor, et al Applicants v. DeSantis Gov. of Fla., 140 S.Ct. 2600 (2020) the Honorable Justice Sotomayor noted "A case implicating the franchise of almost a million people is exceptionally important and likely to warrant review."See this Court's Rule 10..." Teevan argues that over time this standard of review which contradicts the case it seems to define, Hancock-will impact over a million citizens.

GROUND TWO: Teevan argues that his rights under the U.S. Constitution were violated as to due process and equal protection. Moreso, Teevan argues that such has in effect acted to suspend the writ. There exists in the hands of the state a detailed reply to his first and successive petition in the Texas State court. This reply is called the "Staff Writ Memorandum" [SWM herein]. Which explains the justification and reasoning for the denial of both writs and the analysis of the denials of same. Yet this document which would be of the utmost use to both Teevan and thsi court in previewing and preparing his first and only federal petition and the court in ruling upon same has been denied his chance to view these documents. A motions was submitted to the USDC for leave to engate in

Discovery, which was denied.

Teevan has come to believe that this and all federal courts exhaust all clsims prior to filing a federal habeas, the case law on this is large and well developed. To exhaust, Teevan initially submitted a Motion for Rehearing to the Court of Criminal Appeals. This was ignored and after 30 days became moot by action of law. However,, state law does allow for a process to obtain informatiom that is not considered exempt from disclosure.

Pursuant to Texas Rules of Judicial Administration See Vernon's Texas Code Ann. Govt' Code vol. 3, Rule 12 titled the Public Access to Judiciall Records, the courts have through the legislature codificed a process for obtaining the records of such intercourse. Teevan followed the rules and in due course was denied these documents to wit the W.S.M. by Justice Sharon F. Keller.

In this instance the state law allows for a person denied access to the record a means to appeal such and Teevan didso by filing a complaint to the Texas Commission on Judicial Conduct. Specifically a complaint against the denier of the WSM. This, of course was Sharon F. Keller. This complaint was denied and the Commission found no misconduct on the part of the Chief Justice.

As such Teevan has exhausted all available means in an attempt to obtian a document or set of documents the W.S.M..

This review of the habeas proceeding cannot be understated, Teevan asks that the court turn to Ex Parte Dawson, 2016 Tex.Crim. App.Lexis 1440 where in a concurring opinion written by Justice Alcala, who reveled several facts about the court; first the decision violated the law of the state of Texas in that it was decided without a Quorum of Judges. See Texas Constitution Art. V. §4(4)

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and Texas Code of Criminal Procedure art. 11.07. In contrast, the Texas Constitution gives the Justices a power to issue the writ individually but nothing authorizes them the power to deny a writ individually. Which Teevan argues is exactly what happened to him.

Under section C Judge Alcala asserts that "A standing type of General Order that Permits Individual Judges to deny habeas releif based on catagories of case by actinas a proxy for a quorum of Judges conflicts with the Texas Constitution and Code of Criminal Procesure." Explaining "...the Texas Constituition mandates that a quorum of judges decide this court's non-capital cases. This Court's internal administrative procedure that effectively operates as a standing order to permit a single judge to deny habeas relief for certain catagories of Article 11.07 habeas applications based on a predetermined proxy vote in the absence of actual consideration of each case by a quorum fails to comply with the Texas Constitutional Code."

Judge Alcala goes on to explain in four lines of reasoning why she believes that the court's "lone judge" protocols are illegal. I will try to summerize this for brevity, but encourage the reader to understand the impact of such protocol.

FIRST, the vote of a single judge cannot serve as a valid proxy for the vote of a quorum of judges that is required by the Texas Constitution for decisions by the federal courts. A quorum is required because the statute refers to a decision by the court rather than by individuals on the court.

SECOND, although it is proper for courts to use standing orders or

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or proxy votes in limited circumstances those procedures are improper for decisions by the court of criminal appeals, if they result in a decision by that court that denies habeas relief. In essence, it may be acceptable to use single judges to deny a motion of one kind or another or rule on P.D.R.s whose litigants can re-file after identification of violations. The very gravity of the habeas issues makes this process unpalatable. Consider; "in some cases staff attorneys have decided that applicants have failed to plead facts that may entitle them to relief. But pro se pleadings must be liberally construed by judges. It, therefore would be inaccurate to assume that I would make the same discretionary decision that should be made by a quorum of this court...habeas applications invoke broad areas of law. These claims often involve fact-intensive legal questions that necessarily call for analysis and deliberate decision-making by each individual judge...Currently, the types of claims being resolved by a single judge include claims of ineffective assistance of counsel claims under Brady v. Maryland, and claims claiming newly discovered evidence, to name a few...reasonable minds might disagree as to the proper resolution of such matters."

THIRD, a single judge has exclusive control over the disposition of the Article 11.07 applications that are randomly designated to him for resolution by his sole vote. Simply put the process used in resolution of Texas habeas cases is prone to individual bias. "Furthermore, a suggestion that all I need to do is ask and that I will be permitted to participate in the decisions in those cases is inaccurate. I asked. When I was ignored by a majority of the judges on the court. I wrote this concurring opinion."

[See Dawson ibid.]

FOURTH, Because some judges do submit these cases to a quorum of the Court while others do not, all applications for habeas relief are not t reated equally under the current procedural systems. There is bias. I am at a loss of how else to summarize this section.

For a full rendition of this case see the exhibits section. As a result of this opinion Teevan argues that his habeas corpus application did not recieve fair treatment as a result of this process, done illegally at the state court level. Further, Teevan avers that had he been given the ability under discovery to obtain the W.S.M. which would prove the bias and the illegal handling then he could have further developed such into a federal claim, with greater specificity and clairity. However, under this system, Teevan asserts the denial of the W.S.M. and the state process, as applied to him is a violation of the due process and equal protection clauses of the U.S. Constitution. When pondering the nature of this right prior courts have held that due process is the "process that is due" see Logan v. Zimmerman Brush, 102 S.Ct. 1148 (1982) accord Goss v. Lopez 95 S.Ct. 729 (1975). When looking for evidence of this case and fact, Teevan argues that he has only Justice Alcala and the denial slips turned in as exhibits at the lower court.

It is clear from the Dawson case that there is at least the potential for judicial bias and a violation of state law, which was expressly limited by the Texas Constituion and Texas Legislature. As such bias violates well defined U.S. Constitutional law; "... opined there was a reasonable question as to a jsutice's impart-

iality [which] is triggered by an attitude or state of mind so resistant to fair and dispassionate inquiry as to cause a party, the public or a reviewing court to have reasonable grounds to question the neutral and objective character of a judge's ruling or findings." See Litsky v. United States, 114 S.Ct. 1147 (1994) This same case also repeats an oft re-cycled thought, that courts should avoid the "appearance of partiality" to maintain their integrity in the eyes of the public at large.

Last, it is equally important to note that a copy of the W.S.M. would equally be invaluable to the court under the A.E.D.P.A. standard of review. In fact when the A.E.D.P.A. standard of review was codified in 1996. Various federal courts began to question the state courts regarding their practice of denying state writs with only a postcard. As there was no written opinion to consider. Which had previously been the process see Ylst v. Nunnmaker; 111 S.Ct. 2590 (1991); Ex Parte Banks, 759 S.W.2d 539, 540 (Tex.Crim. App. 1999) discussing the direct appeal versus habeas corpus. The court has previously considered this issue, in Wilson v. Sellers, 138 S.Ct. 188 (2018) the court held that it was acceptable for the U.S.D.C. to base it's determination on the justification for denial used by the state court's printed findings and assessed whether or not the ideas contained addressed the federal constitutional issues. This was considered by appellate courts to be better than the process under Harrington v. Richter, 131 S.Ct. 770 (2011) where it was held that a petitioner must show that there was "no reasonable basis for the state court's decision" which meant in practice that if the denial was a simple one-line postcard then it allowed the reviewing court to use any justification it could imagine under

whatever case might be relevant.

This demonstrates that the W.S.M. is very valuable and it provides a framework for the pro se litigant to attack as it limits the court's decision making ability and justification, which would also help reduce the strain on scarce judicial resources.

Teevan argues that as such he is incarcerated in violation of the U.S. Constitution because in order to arrive in federal court he must have had an opportunity to avail himself of the lower state courts, when a series of processes such as these are so vigouriously created and enforced it acts as a suspension of the great writ. See Swain v. Pressley, 430 U.S. 372, 381 (1977).

GROUND THREE: Teevan claims a violation of his Sixth Amendment right to effective counsel, and due process/equal protection. Which was additionally made worse by denial of counsel to assist him under a new and specifi state law Texas Code of Criminal Procedure 11.073 "junk science" statute.

During trial there was a good deal of discussion about how the firearm actually worked. A video provided by the Sheriff showed an individual firing the gun that it was alleged Teevan used in an attempt to kill Deputy Turman. In trial Deputy Turman testified that the weapon made a "snapping sound" as Teevan tried to shoot him. See RR vol 3, page 56 "A..I could hear the - my weapon snapping real close to the back of my head. Q. Okay, And you said a "snapping" okay That weapon is it semiautomatic is it not? A. Yes sir Q. Why would it snap and not fire? A. At that time, I did not have a bullet in the chamber. RR vol.3 page 58;

A. You can just pull this trigger, and it will not fire. The hammer will just continue to come back and fall, - Q. Okay A. He [Teevan] stopped at the front of the vehicle. And, as I turned around and was trying to retrieve my backup weapon, I could see Mr. Teevan was pointing my weapon that he had taken directly at me and snapping it again. Q. Okay, he was pointing it directly at you? A. Yes sir. Q. And he was snapping? A. Yes sir.

Teevan argues that this was perjury on behalf of Deputy Turman, and argues an expert should have been appointed to this case to verify that the weapon in this case a Talon 9mm would not make a snapping sound by repeatedly dry firing as described by Deputy Turman. The 9mm Talon firearm has an internal hammer and requires that the slide be actived each and every time to fire, when there is no bullet in the chamber. Had trial counsel sought the assistance of a firearm expert or gun smith he would have disproved Turman's testimony. SEE EXHIBITS

This exhibit includes an affidavit by a fellow inmate James De Moss who held a federal firearm license and sold firearms. He also did some work as a gunsmith. Teevan argues that this should have also acted as probable cause for the trial court to hold a hearing during the habeas proceedings. This should have established a threshold for the court to at least have examined the basis of Teevan's argument in a successive writ. As it was newly discovered if not just "newly presented".

Since 1985 it has been well decided that the use of expert testimony in criminal trials may be required in the interests of

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fundamental fairness". "Elementary principle that when a state brings it's judicial power to bear on an indigent defendant, it must take steps to assure that defendant has fair opportunity to present defense grounded in significant part on fourteenth amendment's due process gurantee of fundamental fairness, derived from beleif that justice cannot be equal where simply as a result of poverty a defendant is denied an opportunity to participate meaningfully in judicial proceeding in which his liberty is at stake. See Ake v. Oklahoma, 105 S.Ct. 1087 (1985).

In the court's of Texas it is common place to ask judges for funding for experts, see Crevig v. State, 347 S.W.2d 255 (Tex.Crim.App. 1961); Sexton v. State, 93 S.W.3d 96 (Tex.Crim.App. 2002), the question is of course, did trial counsel realize that the gun did not function in the way Deputy Turman testified it did? Certainly this idea was never addressed in the state habeas proceeding in any way.

Teevan argues that both he and trial counsel were convinced that the gun would have made a snapping sound by the videa and the Sheriff's testimony later in trial. But, trial counsel had a duty to investigate crucial facts that could have proven Teevan innocent. Further, had such an investigation been done then perjury would have been proven.

GOUND FOUR: Teevan argues that his right to a fair trial under the Sixth and Fourteenth amendment was violated as there were numerous incidents of perjury that were used in the trial to obtain the conviction. Moreso the evidence of such merited a live evidentiary trial at the state court level.

Appointment of counsel was requested as well as appointment of an expert for development of a writ of habeas corpus.

There were numerous incidents of perjury used by the state to obtain the conviction. Teevan argued that under the law of the state he should have recieved a hearing. Ex Parte Chabot, 300 S.W. 3d 768 (Tex.Crim.App.) and Ex Parte Ghahramani, 332 S.W.3d 470 (Tex.Crim.App. 2001). under these standards not only does Texas recognize convictions as false that are procured with the use of perjury but noted that prosecutors have a duty to correct testimony that they know to be false or misleading.

Teevan argues that the testimony qouted above in Ground Three was perjury because Turman testified to facts that were impossible. Whether or not the District Attorney was aware of this perjury and utilized such in trial is admittedly open for debate. First, one had to accept the notion that this was perjury. Second, Teevan admits that at trial both he and his attorney was fooled by their testimony and video which showed the gun fire repeatedly. But not, "dry fire" repeatedly which was the issue.

It is important to note that all of the habeas efforts done below was done without counsel. Teevan in his second writ effort did specifically request that counsel be appoointed. Specifically citing to the idea that there is limited equitable and constitutional justification for appointment of counsel. Pursuant to Martinez v. Ryan, 132 S.Ct. 1309, 1319-1321 (2012) adopted by Trevino v. Thaler, 133 S.Ct. 1911, 1921 (2013). The question which is plaguing the loswer state courts is one of "threshold" regarding how much evidence and how many facts must be alleged and proventto

entitle the applicant to appointment of counsel. Teevan admits there is no circuit split on this question yet, but points to the inconsistent and reluctant efforts in state court.

GROUND FIVE: The prosecution withheld material and relevant evidence of three eyewitnesses which directly contradicted the testimony of the "victim" Deputy Turman. Teevan asserts that such violates the due process clause and the confrontation clause specifically as it is a Brady error.

Deputy Turman interviewed three eyewitnesses to the indictment which makes up the body of the accusations against Teevan. These witnesses related in the interview that they did not see Teevan with a pistol during the incident. This directly contradicted Deputy Turman's testimony at trial. As they would have been useful in challenging the credibility of Turman's testimony. Mr. Moorman acting as trial counsel did file a motion for exculpatory or mitigatory evidence. Yet, these documents were not made available to Moorman. For years Teevan tried to obtain any information he could because they were mentioned at trial. Finally, a Sheriff's Deputy or a clerk simply without fanfare sent him a copy of the depositions. Only then did he learn what the witnesses would have said.

It was clearly a conflict of interest for Deputy Turman to have interviewed the eyewitnesses and concealed such facts from both the defendant and trial counsel. Teevan points to the evidence of the depositions and asserts that such was either "newly discovered" or under Schlup ibid "newly available". The

Ninth Circuit concluded, regarding the Schlup standard, ibid, that although Justice O'Conner's concurring opinion in Schlup would require newly discovered evidence, the use of the word "presented" in Justice Stevens opinion suggests that "a habeas petitioner may pass through the Schlup gateway without "newly discovered" evidence if other reliable evidence is offered 'that was not presented at trial" see Griffin v. Johnson, 350 F.3d956 (9th Cir. 2003). In either case Teevan again points to the notion that for those in TDCJ who earn no money for prison work and have no income then the fact is that it is virtually impossible to obtian evidence. He again points to his efforts to obtain evidence through the means listed above, various pre-trial efforts such as the Freedom of Information Act.

Teevan supported his location of the eyewitnesses with a single eyewitness who was the sole individual he was able to locate. The affidavit of Candace Michelle Stringham (Parker) who would have testified that she was there on the night of the incident, in 2001 and that she saw an individual exit the patrol car and he did not have a gun. Further, he did not stop in front of the car and attempt to shoot Deputy Turman. Which was the testimony Turman advanced at trial. See RR vol. 3, page 86-87; RR vol.3, page 78.

This evidence was material and would have brought the facts into question in trial. In kyles v. Whitley, 115 S.Ct. 1555, (1995) the court explained that materiality meant that the evidence "could reasonably be taken to put the case in such a different light as to undermine confidence in the verdict." Even

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some pre-Brady cases recognized the effect one witness might have on a prosecution. In Napue v. Illinois, 79 S.Ct. 1173 (1959) "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determative of guilt or innocence."..."

The evidence in the depositions was not merely useful it was favorable and should ahve been released so to the defense prior trial. United States v. Weintraub, 871 F.2d 1257 (5th Cir. 1989) stated "Impeachment evidence as well as exculpatory evidence is included within the scope of the Brady rule requiring its disclosure to accused." accord U.S. v. Bagley, 105 S.Ct. 33 (1985).

Teevan argues that because thee was two separate times that evidece was withheld from him, either could have formed the basis of a valid habeas attack upon the conviction.

GROUND SIX: Trial counsel David Moorman was ineffective in failing to investigate the potential existence of three eyewitnesses whose testimony would ahve challenged both the fact of Teevan's attempted murder which was the core of the indictment and the credibility of Deputy Turman who was the alleged victim. Such violated both the Sixth Amendment and Due Process/Equal protection clauses of the U.S. Constitution.

During trial trial, see vol. 3, page 86-87 the testimony of Deputy Turman related as follows: Q. Did you talk to any body that might have witnessed any part of this [incident] A. [from Deputy Turman] I took statements off a lady that witnessed some of the events. Q. Did you talk to oen person? A. I talked to a female adult and two females that were under 18 years of age. Teevan contends that Moorman should have 1) recognized that he

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did not have copies of the interviews in his files. 2)Stopped the trial and held a hearing on the question of the D.A. not providing copies prior to trial and the admissibility of same. 3) Stopped the trial long enough for Mr. Moorman to have realized that the testimony of these witnesses could have impacted how Deputy Turman was percieved and utilized same to impacted his credibility. As it is indisputable that the witnesses had a field of view that from the elevated position behind the car from a pickup that would have allowed them to view the entire events involved.

It is at best curious as to why, when trial counsel was faced with the revelation that there were additional witnesses , essentially did nothing. Perhaps, it was because Mr. Moorman had little or not trial experience and none in attempted capital murder trials. In any case, Teevan contends that exposure to such information should have lead to the court appointed doing something to get the witnesses to trial or at least investigated their story prior to ending the questioning of Deputy Turman.

Under the now familiar test of Strickland v. Washington, 104 S.Ct. 2052 (1984) Teevan argues that Moorman's decision to not attempt to get the witnesses to trial was below the standard of competent counsel. As counsel has a duty to seek out witnesses and interview them, specifically he cannot depend solely upon an investigator or the District Attorney's reports relating to the quality and and credibility of their witnesses accounts. See Bryant v. Thaler, 28 F.3d 141 (5th Cir. 1994). In Wiggins v. Smith 123 S.Ct. 2527 (2003) headnote #7 "Counsel's strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengable on claim of ineff-

ective assistance." However, headnote #8 also clarifies that "Counsel's strategic choices made after less than complete investigation are considered reasonable, on claim of ineffective assistance precisely to extent that reasonable proefessional judgments supports limitations on investigation."

This brings the reader to the affidavit of trial counsel Moorman in the first writ hearing. Note; this was submitted BEFORE Teevan was aware of what the witness would have testified to in trial, had they been permitted to do so.

Specifically, Teevan submitted an initial 11.07 application, and asked for appointment of counsel to help locate the three eyewitnesses before he was aware of what the substance of their testimony entailed. The appointment of counsel for discovery on habeas was denied.

Teevan again turns to Strickland as under part two he is required to prove prejudice. Teevan argues that the limitation was prejudicial on it's face and that "Counsel is bound by professional duty to present all available evidence and arguments in support of client's position and to contest with vigor all adverse evidence and views." Gagnon v. Scarpalli, 93 S.Ct. 1756 (1973).

GROUND SEVEN: Teevan alleges a violation of his due process rights and denial of counsel and experts. The state of Texas passed an amendment to it's 11.07 writ of habeas corpus law./ The amendment often called the "junk science" statute works on the premises that some forms of science used in the initial trial were not well founded in reality or testing. Or that standards in various sciences have changed in such a fashion that experts are needed to

establish facts upon which the conviction may rest, and such would invalidate the process of the conviction.

Teevan placed in his state writ habeas corpus a motion to appoint counsel requesting an attorney and experts to assist him. Teevan placed in his state habeas corpus a motion to appoint counsel requesting an attoreny to assist him iwth the development of a "junk sciences" argument regarding the function of the gun and whether or not it would repeatedly dry fire.

To date there has not been one single writ placed before the Texas courts that was formulated under this law that was not supported by attorneys and experts of one kind or the other. Yet, because of Teevan's poverty he was denied appointment of counsel and experts.

Teevan exhausted this argument through the habeas process at the state level and seeks review under federal law. He developed same in a motion for a live evidentiary hearing and motion to appoint counsel. In any case the exhaustion requirement "is not jurisdictional, but reflects a policy of federal-state comity designed to give the state an initial opportunity to pass upon and correct alleged violations of prisoners federal rights." See Moore v. Quarterman, 454 F.3d 484, 490-91 (5th Cir. 2006); Anderson v. Johnson, 338 F.3d 392, 386 (5th Cir. 2003).

Teevan argues that this is a "Constitutional Question" of sufficient magnitude that this court should address the issue. In Gideon v. Wainwright, 83 S.Ct. 792 (1963) the court held that "Reason and reflection require us to recognize that in our adversary system of criminal justice, any perosn hauled into court

who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." Also see, U.S. v. Cronic, 104 S.Ct. 2039 (1984). "The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of that trial..." Teevan points out that under 11.073 it would seem that those in the Texas legislature have formed in their minds the process of how a defendant could oppose a body of information and by passing some ill defined "threshold" he could have the conviction reviewed. In Ex Parte Robbins, 2015 Tex.Crim.App. Lexis 1900 (2014) Headnote #3 "Prior to the enactment of Texas Code of Criminal Proc. Ann. Art. 11.073 newly available scientific evidence per se generally was not recognized as a basis for habeas corpus relief in the small number of cases where the applicant can show by a preponderance of evidence innocence." The same is true of Ex Parte Tiede, 448 S.W.3d 456 (Tex.Crim.App. 2014) and Ex Parte Mayhugh, 2016 Tex.Crim.App. unpub. Lexis 1057.

Teevan filed an amended pleading asking for appointment of counsel and appointment of firearms experts to demonstrate one single fact that the court and jury were not made aware of, the gun could not repeatedly dry fire. The arrgument was supported by the De Moss affidavit and the eyewitness testimony, Yet, the court of Criminal Appeals denied the pleading by issuing a post-card denial.

Teevan argues that under the body of case law placed into the common jurisprudence by this court the denial was improper. The fact is that all of the cases above listed Robbins, Tiede, and Mayhugh had lawyers and numerous experts BUT they had money and loads of it to pay for the research and legal presentations.

Under this statute, without money Teevan is denied exhaustion of his arguments which directly impacts his ability to file a federal writ under the §2254 statute.

Last, Teevan would take the time to thank the court and the many fine attorneys who serve as clerks to filter out the applications for writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Scott C. Teevan

Date: 2-28-23

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