

No. 22-7671

In The Supreme Court of the United States

Eduardo Catarino Palacios

Petitioner

v.

THE STATE OF TEXAS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF TEXAS

RESPONSE TO OPPOSITION'S
ANSWER FOR WRIT OF CERTIORARI

SUBMITTED BY

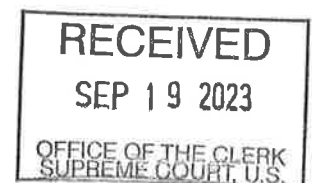
Eduardo Catarino Palacios

TDCJ # 01156135

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QUESTIONS PRESENTED

QUESTION 1. Is the Prosecutor allowed to override a Habeas Courts findings of fact and conclusions of law.

QUESTION 2. Is the Prosecutor allowed to use Art. 11.07 Sec. 4 as a means to deny a corrected 11.07 that is only being re-submitted due to prior 11.07 being dismissed for Non-Compliance.

QUESTION 3. If the CCA dismisses a 11.07 for Non-Compliance is there any law or policy or procedure that prohibits one from filing a corrected Applcationh of Habeas Corpus.

QUESTION 4. Is a Habeas Corpus that was dismissed for Non-Compliance with Texas Rules of Appellate Procedure 73.1 Cause a bar for a corrected 11.07 under rule 11.07 section 4.

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
INTRODUCTION Procedural History	4
ARGUMENT	7
CONCLUSION	10

TABLE OF AUTHORITIES

Supreme Court Cases	5,9
Brady v. Maryland 373 U.S. 83	5,9
Strickland V. Washington 104 S.Ct. 2054	5,9
Texas Statutes/Codes	
Code of criminal Procedure	
Article 11.07	5,6,7,8,9,10
Texas Rules Appellate Procedure 73.1	10
Supreme Court Rules	
Rule 13	7

INTRODUCTION

PROCEDURAL HISTORY

Petitioner Palacios was charged with Murder along with co-defendant Omar "Homer" Escobedo. The only eyewitness to the crime Patricia Salazar, gave a written and tape recorded statement to the police. The audio recording of this statement was lost. Salazar left the State.

Escobedo entered into a plea agreement and testified against Petitioner who took his case to trial. Convicted and sentenced to 50 years plus \$10,000 fine, Petitioner appealed this conviction and sentence. The Fourth Court of Appeals Affirmed on November 10, 2004. Cause Number 04-03-00200-CR.

Petitioner filed his Petition for Discretionary review to the Court of criminal Appeals of Texas. It was refused in case number PD-0187-05 April 13, 2005.

Petitioner filed an 11.07, WR65,150-01, which was denied without written order August 16, 2006.

Petitioner filed a Federal Habeas Corpus under 2254 case 5:06-CV-00151 which was denied September 12, 2008.

Petitioner then Appealed the denial to the Fifth Circuit cause number 41043. Affirmed June 24, 2010.

Petitioner's Mother filed documents with the trial court on letters received from various governmental agencies as to the inquiry of the Missing Tape Recording of Patricia Salazar. The Court took notice of these documents. Appointed Counsel to represent Petitioner. Counselor reviewed the documents. And filed an 11.07 on behalf of Petitioner, similar grounds to the pre-

ivously filed 11.07 which was denied earlier.

The Habeas Court saw something in the Counsels writ of 11.07 and held a hearing. The attending ADA only made the argument that Petitioner should be denied under 11.07 Sec. 4.

Counsel argued that in light of the papers/documents he received, that there were violations of constitutional law, Namely Brady v. Maryland 373 U.S. 83, Where exculpatory evidence was actually hidden from counsel. Secondly, that counsel was ineffective, Strickland v. Washington, 104 S.Ct. 2054. Counsel filed #2 writ of Habeas Corpus.

The Habeas Court heard both arguments and decided that there existed unresolved issues. Orders for an Evidentiary hearing ensued. ADA again at the start of the evidentiary hearing tried to proclaim 11.07 sec. 4. Habeas Court determined that the evidence presented with the 11.07 showed that there were some violations of constitutional law, clearly established Brady law and, secondly, clearly established ineffective assistance of counsel.

During this hearing, The Habeas Court heard evidence that was presented that there actually had been an Audio tape recording. That which if heard by a jury would have changed thier vote of guilty to that of not Guilty. It would have shown that Omar "Homer" Escobedo was the actual shooter, clearly showing that any rational Juror would have found the petitioner Not Guilty of Murder. That petitioner had not pulled the trigger, which makes the Petitioner innocent of the Actual Murder itself.

The Habeas Court wanted to confirm what was in that Audio tape and proceeded with his evidentiary hearing, Bringing Trial Counsel, ADA, and Investigating Officer, All three confirmed that it was Escobedo that pulled the trigger killing the victim. Trial counsel was ineffective for not getting the documents, failing to ask for eyewitness recording, and not arguing correctly while trying to bring up only Eyewitness, Not using "Optional Completeness" as a means to bring a clear picture to show that Petitioner did not shoot and kill the victim.

That the ADA that tried petitioner knew Petitioner was not guilty of the actual Murder but yet tried petitioner anyway, with the actual shooter Escobedo stating that petitioner had done the shooting. The Prosecutor used Escobedo's testimony as the key that found Petitioner Guilty.

Testimony from the Investigator also told that Petitioner was not the one that killed the victim. That the shooter was co-defendant escobedo.

At this point Habeas Court asked for Recommendations as to its verdict. ADA recommended dismissal on grounds of 11.07 sec. 4. Petitioners Attorney filed his recommendation for the Habeas Court to grant on Grounds of Brady Violation and Ineffective Assistance of Trial Counsel. The Habeas Court signed the Recommendation from Petitioners Counsel, Agreeing that relief should be granted. The Clerk transmitted all documents. The Court of Criminal Appeals, without reviewing Petitioner's writ, dismissed for Non-Compliance issues. Petitioners counsel then corrected and refiled the same 11.07 only with corrections made,

Failing to send Petitioner his copy. Petitioner never received a copy of writ #3, Not until after making a new writ #4 on his own and filing it. ADA then seeing how he could win against the previous Judgment that was in favor of Petitioner, Recommended to the CCA that Petitioner violated 11.07 Sec. 4.

With the recent dismissal of his 11.07. Petitioner went to the Supreme Court of the United States following it's rules. The Clerk filed Petitioner's writ. This Court ordered the Attorney General of Texas to file a response. No Response was filed by the Attorney General's office.

ARGUMENT

This response is to what was filed by the District Attorney of the 49th District Court of Texas.

District Attorney's argument only reflects that this court does not have Jurisdiction. Claims that if a writ of Certiorari was filed, it should have been after Counsel filed #3. Not #4. However, Pursuant to Rule 13 which states "within 90 days after enter of judgment."

Petitioner's writ complies with this requirement. It is also stated that if the rule is not followed, The Clerk of the court will refuse to file it.

Next the District Attorney states again that 11.07 section 4 applies to Petitioner's writ. And should be barred. However, the rule 11.07 section 4 (a)(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

District Attorney of the 49th District Court is mistaken in his reply. He himself moved to the Attorney General's office in order to reply to this writ himself. The Attorney General made no response to petitioner's claims. By the very act that District Attorney Isidro R. Alaniz made the response to this writ. Means that he is no longer the District Attorney but implying as him being on staff with the attorney general office, or suggesting Isidro Alaniz is holding Two State Offices, That of the District Attorney, and that of the Attorney General's Office.

This Court Ordered the Office of the Attorney General to respond. Which they declined.

District Attorney's State's the habeas Court's findings are not supported by records. In regards to 11.07 sec. 4. When it is found in record Volume 7 of the Evidentiary hearing, Page 11. Counsel tells the judge that Petitioner was responsible for bringing new documentation that shows that there was an Audio Tape Recording the Prosecution alleged to have lost. This Audio Tape Recording was from the only eyewitness to the events of that night. If one could play this audio tape, they would hear that Escobedo was the Trigger man. The one that actually shot and killed the victim.

However, It now no longer exists because it was truly lost by the Prosecution. Petitioner's Documents show that the chain of custody of this audio tape recording being lastly in the Prosecution's control. All this was discovered due to repeated requests to multiple agencies.

Record Volume 7, Page 7, the judge states that he will decide on whether there are unresolved issues. Where he did find unresolved issues and ordered Evidentiary hearing.

First, District Attorney States they are not supported by the pleadings, and/or the factual finds. Petitioners attorney supported the factual findings with documentation he had uncovered with the change of custody of the actual audio tape recording. This new evidence convinced the habeas Court to hold the Evidentiary Hearing.

Second, the Required basis of 11.07 Sec. 4(a)(2) the constitutional violation was proven to the Habeas Court, Brady v. Maryland 373 U.S. 83 and Strickland v. Washington 104 S.Ct. 2054.

Third, The ADA claims the evidence is introduced in the evidentiary hearing would not support "No rational Juror could have found the Applicant guilty beyond a reasonable doubt." that evidence had the State Prosecutor saying that he knew that Petitioner did not shoot the victim, That this tape pointed to co-defendant as the one that did the shooting. That alone would satisfy this claim, besides the fact that the lead Investigator also stated, in the record, Petitioner did not shoot the victim.

Trial Counsel also stated that he knew that Petitioner was not the shooter. But due to not using proper strategy, that he was ineffective. All which is in the Evidentiary hearing.

CONCLUSION

District Attorney's response should be rejected for One: they don't state a claim that relief could be granted. Two: District Attorney is not employed with the Attorney General's Office. Third: District Attorney is basically only rehashing 11.07 section 4, which does not address any of the questions presented.

Which are, Is the Prosecutor allowed to override a Habeas Courts findings of fact and conclusions of law?

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If the CCA dismisses a 11.07 for non-compliance is there any law or policy or procedure that prohibits one from filing a corrected Application of Habeas Corpus?

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Throughout District Attorney's response. None of the above Questions were answered. The district Attorney's response should be dismissed for failure to answer the questions presented.

Petitioner requests that relief be given to him due to the Non-Responsive Answers to the Questions.

Dated 09-13-23

E. J. P.