

SUPREME COURT OF THE UNITED STATES

FRANCISCO CASTANEDA,
PETITIONER,

v.

Bobby Lumpkin, Director, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTION DIVISION

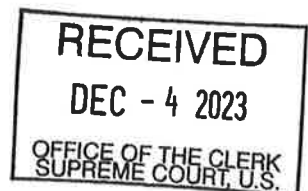
U.S. AP⁵ # 23-50051

NO. 23-5206

MOTION FOR
REHEARING

NOW COMES PETITIONER FRANCISCO CASTANEDA BEFORE THIS HONORABLE COURT PETITIONING FOR RELIEF FROM THIS UNLAWFUL CONVICTION AND FURTHER STATES, DECLARES AND KNOWS THAT HE IS BEING HELD IN CUSTODY IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE IN VIOLATION OF THE LAWS OF THE UNITED STATES NAMELY THE CONSTITUTIONAL AMENDMENTS 4TH, 5TH, 6TH, 14TH AMENDMENTS. PETITIONER DID NOT HAVE A FAIR TRIAL AND IS INNOCENT OF THIS CAPITAL OR OTHERWISE INFAMOUS CRIME WHERE THERE WAS NO GRANDJURY.

1.



As a result of this miscarriage of justice petitioner's Eighth Amendment Right is Violated and the Hoc es corpus MEUM is subjected To cruel and unusual punishment.

Background and Procedural History

Castaneda was convicted by a jury on January 8th, 2010, for The Capital murder of his girlfriend's three-year-old child. In cause NO. 2007000561 in the 148th District Court of El Paso County Texas. On appeal it was argued the evidence was legally and factually insufficient to support his conviction, the trial court erred by denying his motion to suppress evidence found during a warrantless search of the vehicle, and the trial court erred by admitting into evidence an interview with child witness because it violated his constitutional rights to confront and cross examine a witness. Castaneda v. State, NO 08-10-00050-CR, 2011 4490960 (TEX. APP.-EL PASO Sept. 28, 2011, pet. (ctd.))

His conviction was affirmed by the Eighth Court of Appeals on Sept. 28, 2011. Petition for Discretionary Review was refused by the Court of Criminal Appeals on March 30, 2012. *Castaneda v. State*, PDR No. 156T-11 (Tex. Crim. App. 2012). Castaneda hired an attorney to file his first state writ challenging his conviction on May 29, 2013. It was asserted twenty-one grounds for relief. He claimed, among other things "trial counsel rendered ineffective assistance because he would not let him testify at trial." *Ex Parte Castaneda*, No. WR-80,285-01, 2014 WL 909990 (Tex. Crim. App. March 12, 2014). The Court of Criminal Appeals denied without a written order on the findings of the trial court on July 23, 2014. The Court of Criminal Appeals did not send a notification to the petitioner or the petitioner's attorneys of the denial until June 26, 2019. The file stamp June 26, 2019 reflects the notice was sent to the District presiding judge, county clerk and attorney of record. Petitioner was NEVER notified of the denial by the court or attorney. Besides being left in the dark the attorney kept the petitioner's record for 5 years.

MOREOVER the ATTORNEY REFUSED to RETURN THE CLERK'S 2ND REPORTERS RECORDS to PETITIONER when ASKED to DO SO. THE ATTORNEY FINALLY agreed to return the RECORDS but by this TIME THE A.F.D.P.A. statute of limitations had EXPIRED. CASTANEDA FILED a second state writ on June 8, 2022 Habeas Corpus. His petition was dismissed without written order as a subsequent writ on August 3, 2022. In his Federal petition August 10, 2022 CLAIMS WERE (1) indictment was invalid and void (2) collateral EXTRINSIC FRAUD, El Paso police violated his Rights when he was placed in restraints and made an unwanted SEARCH and ~~Seizure~~ (3) counsel was ineffective because he did not allow petitioner to present witnesses and evidence at the suppression hearing (5) counsel did not object to statements obtained by police (6) his counsel failed to ask an appellate judge to recuse herself because she had reviewed the case as trial judge (7) counsel failed to preserve errors and did not object to previously reported statements (8) counsel did not call Juliana Zubia, Bando llo Encarnas,

4.

Ruben Villegas, Margarita Alcaer, and Paramedic Daniel Troncoso -
To Testify. (9) He was denied the opportunity to confront a
Five year old witness (10) Counsel denied him witnesses who had
Testified at the motion to reduce bond. (11) Counsel Failed
To impeach OFFICER David Leonzalez in his inconsistent
statements about the confiscation of the car keys (12)
Counsel Failed to object to erroneous jury instructions;
(13) Counsel Failed to investigate the case; 2nd counsel
Failed to present relevant facts at trial.

PETITIONER is Eligible For Equitable Tolling

Petitioner contends the state bears the heavy burden of
proving, with clear and convincing evidence that petitioner
had a subjectively aware and deliberative intentional
decision to forgo the grounds brought on the second
application. Whatsoever, petitioner contends he is
eligible for equitable tolling concerning the 1 year time
limitation mandated by the 5. AEDRA.

Even Further, the time limitation is not jurisdictional. *Day v. McDonough* 547 U.S. 148, 209-210 (2006).

THE SUPREME COURT has held in addition to statutory tolling, a Habeas petitioner MAY be entitled to equitable tolling IF he or she diligently pursued his or her rights and was prevented from timely filing a petition by some extraordinary circumstance. *Holland v. Florida* 130 S.Ct. 2549, 2562 (2016). A court may need to hold an evidentiary hearing to determine whether a petitioner acted with diligence.

Ultimately petitioner asks this court if petitioner's INNOCENCE rests in the Evidence that WAS METHODOLOGICALLY Suppressed by Defense? (attorney, 2nd appellate attorney which is one and the same.)

Finally, All over the NEWS COVERAGE OF THE CASE it was the Perez (Mother) and the "live-in Boy Friend" HOWEVER at petitioner's trial NOTHING WAS ALLOWED TO THE DEFENSE

CONCERNING the Mother who WAS ALSO PRESENT DURING the time the child sustained the injuries. THE FIVE YEAR old's outcry witness was suppressed because it accused Perez. AND MOREOVER

Perez was convicted of capital murder and was sentenced to 35 additional years for an injury to an elderly and injury to a child charge.

In Perez v. State, 2015 TEX. APP. LEXIS 8111 PEREZ puts the body in the trunk of the vehicle vs.

In petitioner's appeals court. THIS WOULD MEAN NEWLY DISCOVERED EVIDENCE FOR THIS CASE BECAUSE TDCJ in February of this term ²⁰²³ petitioner was issued a MEDIA TABLET with the LEXIS NEXUS APP.

WHEREFORE, PETITIONER ASKS THIS COURT FOR RELIEF. I PRAY TO THE ALMIGHTY GOD THAT HE GIVES FAVOR AND HIS ATTENTION HERE.

UNSWORN DECLARATION

I, petitioner, FRANCISCO CASTANEDA SWEAR, STATE
AND SUBSCRIBE EVERYTHING ALL FACTS STATED ABOVE ARE
TRUE TO THE BEST OF MY KNOWLEDGE under the
Penalty of perjury ~

X 
FRANCISCO CASTANEDA,
TDC# 1420126
WAINWRIGHT UNIT
2665 PRISON RD 1
LOVELAND, TX 75851

CERTIFICATE OF SERVICE

I, petitioner, Francisco Castaneda, do hereby certify that
a true and correct copy has been mailed to the attorney
Leonora Rene Paxton at P.O. Box 12548 Austin, TX
78711-2548 on the NOV. 16, 2022.
Mail Box Rule NOV. 16, 2022 To leave
WA U.S.P.S. First class.

X 
FRANCISCO CASTANEDA,
TDC# 1420126
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LOVELAND TX 75851