

23-5307

NO. _____

A
ORIGINAL

SUPREME COURT OF THE UNITED STATES

Curt Crowder,

Petitioner,

v.

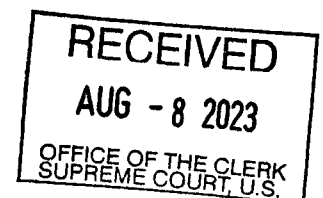
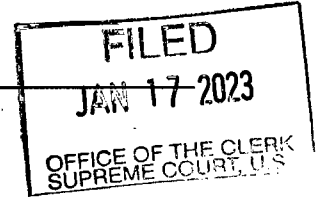
State of Texas

Respondent.

On Petition for a Writ of Certiorari to
the Texas Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

Curt Crowder
Petitioner
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I. Question Presented

When a citizen is deprived of the right to present witnesses in his defense, and effective assistance of counsel, in both the trial and appellate process, what is the remedy?

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III. Table of Authorities

United States Constitution, Amendment VI

Crowder v State, No 01-16-00511-CR, (Tex. App. Houston [1st Dist.] July 18, 2017, no Pet.)

Strickland v. Washington 466 U.S. 668 (1964)

US v. Cronin 466 U.S. 648,659 (1984)

Trevino v. State 565 S.W.2d 938,940 (Tex.Crim. App 1978. En banc).

93 S.W. 3d 593,595 (Tex App. Houston [14th Dist.] 2002, pet. Dism'd).

Clemons v State, 605 S.W. 2d 567 (Tex. Crim. App. 1980)

IV. Petition for Writ of Certiorari

Curt Crowder, by and through Attorney Antuan Johnson, respectfully petitions this court for a writ of certiorari to review the judgment of the Texas Court of Appeals.

V. Opinions Below

The decision by the Texas Court of Appeals denying Mr. Crowder's direct appeal is reported as *Crowder v. State*, No. 01-16-00511-CR (Tex. App.—Houston[1st] July 18, 2017, no pet.). The Texas Court of Criminal Appeals denied Mr. Crowder's petition for writ of Habeas Corpus on October 19, 2022. Appendix 3 (WR-92,569-01)

VI. Jurisdiction

Mr. Crowder's writ of Habeas Corpus to the Texas Court of Criminal Appeals was denied on October 19, 2022. Mr. Crowder involves this Court's jurisdiction under 28 U.S.C § 1257, having timely filed this petition for a Writ of Certiorari within 90 days of the Texas Court of Criminal Appeals Judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have

been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense..

VIII. Statement of the Case

The Sixth Amendment of the United States Constitution affords each citizen with the right to have witnesses in his favor and have the assistance of counsel for his defense. Here, Mr. Crowder was deprived of both.

1. Denial of the right to present witnesses in his favor at the trial stage

At trial, the prosecution alleged that trial counsel violated the Rule (TRE 614) and successfully moved to have the testimony of two defense witnesses excluded. Trial council conceded a violation of the rule, even though there was not one and did not argue against the exclusion of the two witnesses, Brittany Ham and Chris Braziel. Trial counsel concedes that he wholly failed to advocate for Mr. Crowder, and that the proper correction of action in these circumstances would have been to note that the Rule had not been invoked, affirmatively argue that his conduct did not violate the Rule, and make an offer of proof that Brittany Ham's testimony be put on the record outside of the presence of the jury. Instead, trial counsel agreed with the State's contention that he had violated the Rule, in spite of the fact that he had not, allowing these favorable witnesses testimony to be

excluded from trial and completely depriving Mr. Crowder of important information for his defense.

Specifically, Ham's testimony consisted of the words police used and her own subjective feelings of coercion by the police. According to Ham, the police threatened to report her to CPS if she did not consent to the search of Mr. Crowders residence.

Ms. Ham is the one witness who could adequately testify to these facts.

Mr. Brazile's testimony was to be that the police had already opened the safe when an officer returned with the sign warrant. Despite this apparent conflict between the testimony of both Brazil and ham, both claim that ham consent was coerced.

Trial counsel's strategy hinged entirely on one of two suppression theories, 4 either which was necessarily supported by the testimony of Braziel and/or Ham. Ham and Braziel's testimony would have given Mr. Crowder two opportunities to prevail on his suppression theory; first by this Court's ruling on the issue and second by submission of the issue to the jury; the outcome would likely have been different had these witnesses been allowed to testify.

Mr. Crowder suffered prejudice where trial counsel's lack of argument and outright concession on this point failed to preserve the error for appeal, and Mr. Crowder was therefore unable to obtain relief on this ground. Trial counsel further concedes that this was not trial strategy, as the only evidence that trial counsel intended to present in support of his motion to suppress was the testimony of Ham and Braziel. ⁵

Soon before the motion was overruled by operation of law, Mr. Rivera gave Mr. Buckner a variety of reasons why he would not have the hearing, claiming that "the hearing was optional, that the witnesses were not going to come, and that it was too late anyway. "¹³ Mr. Rivera could have done more. Mr. Rivera could have set a hearing date, as the hearing had already been granted.C.R. at 193. Mr. Rivera could have secured the appearances of his witnesses by issuing subpoena. Mr. Rivera was well aware of Mr. Crowder's right to compulsory process, as the motion Mr. Rivera filed aptly argued that it had been erroneously violated. C.R. at 183-92. Because Mr. Rivera failed to do any of these things, his performance was deficient, particularly in light of the fact that Mr. Dixon was eager to testify favorably.

Mr. Crowder was prejudiced by counsel's deficient performance in failing to set the hearing and secure the testimony of the witnesses, where the trial record and the affidavits of Mr. Dixon,¹⁴ Mr. Buckner,¹⁵ and Mr. Brazie¹⁶ demonstrate that the testimony of those witnesses and of Ms. Ham¹⁷ was likely to be favorable to Mr. Crowder. Likewise, failure to expand the record with the witnesses' excluded testimony left appellate counsel an insufficient record to support the claims on direct appeal.

Mr. Crowder received ineffective assistance of counsel where Counsel in Motion for New Trial failed to obtain a ruling on his Motion. The right to effective assistance of counsel extends not only to trial, but also to a Motion for New Trial. U.S. v. Cronin, 466 U.S. 648, 659 (1984); Trevino v. State, 565 S.W.2d 938, 940 (Tex.Crim. App. 1978, en banc).

Furthermore, in *Belcher v. State*, the defendant's principal and prevailing complaint was that counsel failed to obtain a ruling on the defendant's Motion for New Trial within the court's 75 day plenary period, thus causing the defendant prejudice. 93 S.W.3d 593, 595 (Tex. App.-Houston [14th Dist.] 2002, pet. dismiss'd).

Just as counsel's silence in *Belcher* prejudiced the defendant in that the trial court granted the Motion for New Trial after its plenary power had expired, counsel's inaction here deprived him not only of a hearing which had been granted, but also "effectively denied appellant the presence of competent counsel." *Id.* at 596. Merely filing the Motion was not enough, particularly where there were facts that would have been proven through a hearing that would entitle Mr. Crowder to relief. Again, as the court noted in *Belcher*,

"[t]hat a person who happens to be a lawyer is present at trial alongside the accused is not enough to satisfy the constitutional command."

id. (citing *Strickland*, 466 U.S. at 685). Counsel's failure to argue or otherwise obtain a ruling on his motion prejudiced Mr. Crowder, who under the facts discussed in Issues One through Three, would have been entitled to a new trial, or should have at least had the denial of which reviewed by the court of appeals.

IX. Reason for Granting the Writ

The rights afforded to united states citizens under the constitution are meant to protect citizens from the type of injustice that has occurred here. Had Mr. Crowders witnesses been able to testify, rial counsel would have likely prevailed on a motion to suppress the search of the home. Thus, rendering a much different verdict in his trial. Furthermore, the fact that the next lawyer failed MR. Crowder by not properly subpoenaing witness and setting a hearing for the motion for new trial, prejudiced Mr. Crowder even more.

X. Conclusion

Due to the injustice faced by Mr. Crowder in direct contradiction of his Sixth amendment rights to counsel and to have witnesses called in his favor, we ask that his sentence be commuted or any other relief that the Court deems appropriate.

/s/ Curt Crowder
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