

23-5447

No. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED

JUL 11 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ANTONIO CHIMNEY,

Petitioner

vs.

THE STATE OF TEXAS,

Respondent

ON WRIT OF CERTIORARI TO THE
TEXAS COURT OF CRIMINAL APPEALS

PETITION FOR CERTIORARI

ANTONIO CHIMNEY, PRO SE
MICHAEL UNIT - TDCJ #00768090

2664 FM 2054

TENNESSEE COLONY, TX 75886

PETITION FOR CERTIORARI
QUESTIONS PRESENTED FOR REVIEW

1. May Laches be used to deny an Application for Writ of Habeas Corpus that is based on Actual and Factual Innocence?
2. May the Common Law Doctrine of Laches Overrule Constitutional Claims of Actual and Factual Innocence?
3. May Laches Suspend the Great Writ within the meaning of the Constitution?

LIST OF PARTIES IN COURT BELOW

The caption set out above contains the names of all the parties.

LIST OF CASES DIRECTLY RELATED TO THIS CASE

1. TEXAS COURT OF CRIMINAL APPEALS
2. WR-90,121-02 Tr. Ct. No. 22-9640-W2
3. THE STATE OF TEXAS v. ANTONIO CHIMNEY
4. May 3, 2023

CORPORATE DISCLOSURE STATEMENT

Neither party in this matter is a corporate entity that is so required to make any Corporate Disclosure. Therefore, no such disclosure is being made.

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APPENDIX

Orders and Judgments of Courts Below

1. Texas Court of Criminal Appeals' Order for a Hearing
on Application for Writ of Habeas Corpus
October 5, 2022
2. 12TH District Court of Madison County, Texas FINDINGS
OF FACT AND CONCLUSIONS OF LAW recommending denying the
Application for Writ of Habeas Corpus for Laches
April 12, 2023

TABLE OF AUTHORITIES CITED

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Cases	
Caldwell v. Barnes, 975 S.W.2d 535,538 (Tex.Crim.App. 1998)	3
Chimney v. State, 6 S.W.3d 681 (Tex.App.- Waco [10th Dist.] 1999, 1999 Tex.App. LEXIS 8240 (Tex.App. Waco Nov. 3, 1999)	viii,1
Ex parte Chimney, 2022 Tex.Crim.App.Unpub. LEXIS 452 (Tex.Crim.App. Oct. 5, 2022)	viii,1
Green v. Parrack, 974 S.W.2d 200, 204 (Tex.App.- San Antonio 1998, no pet)	3
Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed. 203 (1993)	3
In re Chimney, 2003 Tex.Crim.App. LEXIS 177 (Tex.Crim. App. July 2, 2003)	viii,1
McQuiggin v. Perkins, 569 U.S. 383, 386, 133 S.Ct. 1924, 1928, 185 L.Ed.2d 1019 (2013)	3
Constitution, Statutes, Regulations and Rules	
U.S. Constitution Article 1, Section 9	x
28 U.S.C. §1257(a)	ix
Article 11.07, Texas Code of Criminal Procedures	x
Article 1.08, Texas Code of Criminal Procedures	x

CITATIONS OF OPINIONS AND ORDERS IN CASE

The original conviction in the 12th District Court of Madison County, Texas, was appealed to the 10th Court of Appeals in Waco, Texas. The Appeal is reported as: *Chimney v. State*, 6 S.W.3d 681 (Tex.App.-Waco [10th Dist.] 1999), 1999 Tex.App.LEXIS 8240 (Tex. App. Waco Nov. 3, 1999).

The Texas Court of Criminal Appeal's Refusal of the Petition for Discretionary Review is reported as: *In Re Chimney*, 2003 Tex.Crim.App. LEXIS 177 (Tex.Crim.App. July 2, 2003).

The Texas Court of Criminal Appeal's Order to the lower court to address Petitioner's claims of Actual and Factual Innocence in the Application for Writ of Habeas Corpus was unpublished, but it is reported as: *Ex parte Chimney*, 2022 Tex.Crim.App.Unpub. LEXIS 452 (Tex.Crim.App. Oct. 5, 2022).

JURISDICTIONAL STATEMENT

The Order Denying Petitioner's Application for Writ of Habeas Corpus was entered by The Texas Court of Criminal Appeals, the highest criminal appeals court in the state of Texas, on May 3, 2023. The duly filed Motion for Reconsideration with a Request for a Hearing En Banc was Denied on May 26, 2023. The proper jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Article 1, Section 9, of the U.S. Constitution provides:
"The Privilege of the Writ of Habeas Corpus shall not be suspended..."
2. The statute under which Petitioner sought post conviction relief was Article 11.07 of the Texas Code of Criminal Procedures.
3. Petitioner's right to file an Application for Writ of Habeas Corpus was suspended on the basis of Laches, a Common Law Doctrine, in violation of Article 1.08 of the Texas Code of Criminal Procedures.

STATEMENT OF THE CASE

The State of Texas indicted Petitioner for Capital Murder in the death of CASSANDRA OWENS and TONJA BYRD. Petitioner allegedly shot both victims after an altercation at a night club in the town of Madisonville, Texas. Petitioner went to trial and was acquitted on the charge of murdering OWENS. The jury convicted Petitioner of the lesser-included offense of murder and sentenced him to LIFE in prison. Petitioner appealed the conviction. See *Chimney v. State*, 6 S.W.3d 681 (Tex.App.-Waco 1999). Said appeal was denied and the subsequent Petition for Discretionary Review was refused by the Texas Court of Criminal Appeals. See *In re Chimney*, 2003 Tex.Crim.App. LEXIS 177 (Tex.Crim.App. July 2, 2003).

After learning that the State of Texas had continued to persue another individual, ROSHAN GERMAINE PERRY, as the true culprit in the shooting deaths of OWENS and BYRD, Petitioner also learned the State of Texas had accepted an open plea from PERRY admitting to being that actual shooter in the Madisonville, Texas shooting for which Petitioner had been erroneously convicted. The statements and confession of PERRY, which was withheld from Petitioner for years by the State of Texas, made it clear and apparent that Petitioner was both Actually and Factually Innocent. Petitioner filed an Application for Writ of Habeas Corpus. See *Ex parte Chimney*, 2022 Tex.Crim.App.Unpub. LEXIS 452 (Tex.Crim.App. Oct. 5, 2022). After an ordered hearing, which included testimony by PERRY, who confirmed Petitioner's innocence, the Application was denied for Laches without regard for Petitioner's innocence.

ARGUMENT FOR ALLOWANCE OF WRIT

The Texas Court of Criminal Appeals Erred in Denying the Application for Writ of Habeas Corpus on the Basis of Laches, a Common Law Doctrine, over Granting the Application for Writ of Habeas Corpus on the Basis of Actual and Factual Innocence, Constitutional Law Matters, that Petitioner has proven.

The Texas Court of Criminal Appeals Erred in allowing a Common Law Doctrine to Override Constitutional Law Matters, such as the Actual and Factual Innocence of an Incarcerated Individual.

The Texas Court of Criminal Appeals Erred in Applying Laches to Petitioner's Application for Writ of Habeas Corpus when the State of Texas was not, and could not be, prejudiced by the Writ being granted because they could essentially retry Petitioner if his conviction was overturned because there is no Statute of Limitation on the crime of murder in the State of Texas.

The Questions Raised in This Case Are Important and Unresolved, as the actions of the Texas Court of Criminal Appeals has proven. Therefore, it would be in the interest of justice and fairness that this Writ be Allowed.

CONCLUSION

The denial of Petitioner's Application for Writ of Habeas Corpus on the Basis of Laches is a unique departure from decisions of this Court that authorizes Actual and Factual Innocence claims to be heard and ruled upon. See *McQuiggin v. Perkins*, 569 U.S. 383, 386, 133 S.Ct. 1924, 1928, 185 L.Ed.2d 1019 (2013); also see *Herrera v. Collins*, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993).

In Texas, Laches has been described as an equitable remedy that prevents a petitioner from asserting a claim due to lapse of time. See *Green v. Parrack*, 974 S.W.2d 200, 204 (Tex.App.- San Antonio 1998, no pet.).

The Texas Common Law Doctrine of Laches typically requires proof by a preponderance of the evidence of two elements:

1. Unreasonable delay by the opposing party; and
2. Prejudice resulting from the delay.

See *Caldwell v. Barnes*, 975 S.W.2d 535, 538 (Tex.Crim.App. 1998).

The State of Texas presented no evidence of prejudice, and the delay in Petitioner finding out the matters concerning the charges and open plea by PERRY was due to the State of Texas not being forthcoming with such evidence.

Essentially, the State of Texas is being allowed to suspend the Writ of Habeas Corpus for Petitioner in violation of U.S. Const. Article 1, Section 9. Laches should not have been applied and allowed in this case. Petitioner is being denied his rights per the United States Constitution, and no reasonable or rational juror

would have found him guilty had the evidence presented in his Application for Writ of Habeas Corpus been presented to them for consideration.

Petitioner is being wronged by the State of Texas, he is being Illegally Detained and Restrained of his Liberty, and without the Intervention and Ruling of this Court he will continue to be denied justice in the State of Texas.

This Petition for a Writ of Certiorari should be, therefore, Granted.

Executed on this the 7th day of July, 2023.

Respectfully Submitted,

Chimney, Antonio
Antonio Chimney

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