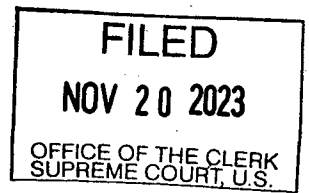


23 - 6561

No. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

Lawrence Edward Thompson — PETITIONER  
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Lawrence Edward Thompson  
(Your Name)

Alfred Unit, 210 F.M. 369S  
(Address)

Iowa Park, Texas 76367  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

QUESTION(S) PRESENTED

Whether The Texas Court of Criminal Appeals Decision Is  
In Conflict With This Court's Decision In Smith v. Delo, 513 U.  
S. 298 (1995).

### LIST OF PARTIES

☒ 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

Thompson v. State, Cause No. 427418, 232nd District Court of Harris County, Judgment Entered October 17, 1985.

Ex Parte Laurence Edward Thompson, Cause No. 427418-R, 232nd District Court of Harris County, Texas, Judgment Entered August 17, 2023.

Ex Parte Laurence Edward Thompson, No. WR-15.158-51, Texas Court of Criminal Appeals, Judgment Entered September 27, 2023.

## TABLE OF CONTENTS

|                                                        |     |
|--------------------------------------------------------|-----|
| OPINIONS BELOW .....                                   | 1   |
| JURISDICTION.....                                      | 2   |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... | 3   |
| STATEMENT OF THE CASE .....                            | 4   |
| REASONS FOR GRANTING THE WRIT .....                    | 5-8 |
| CONCLUSION.....                                        | 9   |

## INDEX TO APPENDICES

|            |                                                 |
|------------|-------------------------------------------------|
| APPENDIX A | Decision of the Texas Court of Criminal Appeals |
| APPENDIX B | Decision of the State Trial Court               |
| APPENDIX C | State's Original Answer                         |
| APPENDIX D | Article 11.07, V.A.C.C.P.                       |
| APPENDIX E | Denial of Motion For Rehearing                  |
| APPENDIX F |                                                 |

## TABLE OF AUTHORITIES CITED

| <u>Case</u>                                                       | <u>Page Number</u> |
|-------------------------------------------------------------------|--------------------|
| <u>HERRERA v. Collins</u> , 506 U.S. 390<br>(1993)                | 5                  |
| <u>Graham v. Delo</u> , 513 U.S. 298<br>(1995)                    | 4-8                |
| <u>Strickland v. Washington</u> , 466 U.S. 668<br>(1984)          | 5, 6               |
| <u>House v. Bell</u> , 547 U.S. 518<br>(2006)                     | 8                  |
| <u>Ex Parte Elizondo</u> , 947 S.W.2d 202<br>(Tex.Crim.App. 1996) | 5                  |

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Brady v. Maryland, 373 U.S. 83  
(1963)

5

Ex Parte Brooks, 219 S.W.3d 396  
(Tex. Crim. App. 2007)

5

Ex Parte Miller, 394 S.W.3d 502  
(Tex. Crim. App. 2013)

7

### STATUTES AND RULES

Articles 11.07 and 11.071, V.A.C.C.P.

5

### 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**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ 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 \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the 23rd District Court, Harris County, Texas court appears at Appendix B to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 9/27/23.  
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: October 31, 2023, and a copy of the order denying rehearing appears at Appendix E.

☐ 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

### AMENDMENT 6 Rights of the Accused

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 WITNESSES AGAINST HIM, TO HAVE COMPULSORY PROCESS FOR OBTAINING IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

### AMENDMENT 14

SECTION 1, [CITIZENS OF THE UNITED STATES] ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES, NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

# STATEMENT OF THE CASE

ON OCTOBER 17, 1985, PETITIONER WAS CONVICTED BY A JURY OF THE FELONY OFFENSE OF BURGLARY OF A BUILDING AND SENTENCED BY A JUDGE TO SEVENTY-FIVE (75) YEARS IN CONFINEMENT. THE FIRST COURT OF APPEALS AFFIRMED THE CONVICTION AND SENTENCE, Thompson v. State, No. 01-85-00887-CR (Tex App.-Houston [1st Dist.] June 5, 1986, Pet. Ref'd).

ON JULY 24, 2023, PETITIONER FILED AN APPLICATION FOR WRIT OF HABEAS CORPUS IN THE 23RD DISTRICT COURT OF HARRIS COUNTY, TEXAS ALLEGING A WILLY V. DEL, 513 U.S. 208 (1995), ACTUAL INEFFECTIVE CLAIM OF A PROCEDURALLY-DEFAULTED INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM. THE STATE FILED THEIR ANSWER ON AUGUST 3, 2023, ALLEGING THAT PETITIONER'S CLAIM WAS PROCEDURALLY BARRED BY ARTICLE 11.07, V.A.C.C.P.. THE TRIAL COURT ENTERED ITS FINDINGS OF FACT AND ORDER WITHOUT ADDRESSING THE PETITIONER'S CLAIM ON AUGUST 17, 2023.

ON SEPTEMBER 11, 2023, THE TEXAS COURT OF CRIMINAL APPEALS RECEIVED AND FILED THE PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS. ON SEPTEMBER 27, 2023, THE TEXAS COURT OF CRIMINAL APPEALS DISMISSED WITHOUT A WRITTEN ORDER PURSUANT TO ARTICLE 11.07, SECTION 4(a)-(c), V.A.C.C.P..

## REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals has rendered a decision that is in conflict with this Court's decision in Schulz v. Delo, 513 U.S. 298 (1995), and has so far departed from the accepted and usual course of Judicial Proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. In Schulz v. Delo, 513 U.S. 298 (1995), this Court wrote, "Schulz's claim thus differs in at least two important ways from that presented in HERRERA. First, Schulz's claim of ~~involvement~~ does not by itself provide relief. Instead, his claim for relief depends critically on the validity of his Franklin and Brady claims." In Ex Parte Elizondo, 947 S.W.2d 202 (Tex. Crim. App. 1996), the Texas Court of Criminal Appeals adopted this Court's analysis of actual involvement in Schulz v. Delo, 513 U.S. 298 (1995). The Texas Court of Criminal Appeals wrote in Ex Parte Brooks, 219 S.W.3d 396 (Tex. Crim. App. 2007). "The subsequent Application Provision adopts the abuse-of-the-writ doctrine used in Federal Practice, which limits an inmate to one application for writ of ~~habeas corpus~~ except in exceptional circumstances. Specifically, the subsequent Application Provision in Articles 11.07 and 11.07 were enacted in response to Schulz v. Delo, 513 U.S. 298, 159 Ct. 851, 130 L. Ed. 2d 808. In Schulz, the United States Supreme Court ruled that the Federal habeas petitioner must show that a constitutional violation more likely than not 'resulted in the conviction of an innocent person'."

The Petitioner was convicted by a Jury on October 17, 1985 of the felony offense of Burglary of a Building and by a Judge to seventy-five (75) in confinement. A witness, John Torres testified at trial that he left the Motel office

## Reasons For Granting The Petition

FOR ABOUT FIVE MINUTES AND WHEN HE RETURNED, HE SAW THE PETITIONER'S LEGS STICKING OUT OF A 11½ BY 12 INCH LAUNDRY CHUTE. IN THE INSTANT STATE APPLICATION FOR WRIT OF HABEAS CORPUS, THE PETITIONER ALLEGED THAT THE PETITIONER'S TRIAL COUNSEL: STEVEN GREENLEE; FAILED TO INVESTIGATE THE CASE BY GOING TO THE SCENE OF THE OFFENSE TO MEASURE THE LAUNDRY CHUTE, OR MEASURING THE PETITIONER'S BODY TO DETERMINE WHETHER THE PETITIONER FIT THROUGH THE LAUNDRY CHUTE, OR TO HAVE AN INVESTIGATOR PERFORM THESE TASKS, OR TO BUILD A REPLICA OF THE LAUNDRY CHUTE TO HAVE THE PETITIONER ATTEMPT TO CLIMB THROUGH AT TRIAL. THE PETITIONER HAS PREVIOUSLY RAISED THE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PAST. THE STATE OR THE TRIAL COURT HAS FAILED TO ADDRESS, INVESTIGATE, HAVE PETITIONER'S TRIAL COUNSEL RESPOND, OR QUESTION PETITIONER'S TRIAL COUNSEL, OR HAVE TRIAL COUNSEL FILE AN AFFIDAVIT DETAILING HIS ACTIONS IN REPRESENTING THE PETITIONER. IN Strickland v. Washington, 466 U.S. 688 (1984) THIS COURT WROTE, "... IN OTHER WORDS, COUNSEL HAS A DUTY TO MAKE REASONABLE INVESTIGATIONS OR TO MAKE A REASONABLE DECISION THAT MAKES PARTICULAR INVESTIGATIONS UNNECESSARY. IN ANY INEFFECTIVENESS CASE, A PARTICULAR DECISION NOT TO INVESTIGATE MUST BE DIRECTLY ASSAILED FOR REASONABLENESS IN ALL CIRCUMSTANCES, APPLYING A HEAVY MEASURE OF DEFERENCE TO COUNSEL'S JUDGMENTS." A SITTING JUDGE OF THE TEXAS COURT OF CRIMINAL APPEALS: MARY LOU KEEL TWICE REJECTED THE PETITIONER'S CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL WITHOUT ANY INPUT FROM PETITIONER'S TRIAL COUNSEL. PETITIONER HAS NEVER BEFORE RAISED THE CLAIM OF ACTUAL INEFFECTIVE ASSISTANCE IN THIS CONVICTION.

## REASONS FOR GRANTING THE PETITION

The Petitioner Pled in the State Application For Writ of HABEAS CORPUS that counsel was appointed on June 19, 1985, and that Petitioner NEVER saw or talked to counsel until October 15, 1985. Petitioner also Pled that Petitioner NEVER discussed the facts of the case with counsel and that counsel told the Petitioner: "I don't have to talk to you or investigate the facts of the case, because Mr. Williams told me EVERYTHING ABOUT THE CASE." Mrs. Clyde Williams, was the Petitioner's first appointed to Petitioner's case, that Petitioner complained to the trial court about because she allowed a prosecutor to be present during her conversations with the Petitioner; without informing the Petitioner who the prosecutor was or without Petitioner's consent. Mrs. Williams also told the Petitioner that "Petitioner was going to have to get someone to go to the scene of the crime, because the trial judge did not like to appoint investigators." Thus, Petitioner's claim of investigation by trial counsel was previously raised but not addressed, and is procedurally barred and properly brought under Colup v. Delo, 513 U.S. 298 (1995). The Texas Court of Criminal Appeals wrote in Ex Parte Milner, 394 S.W.2d 502 (Tex. Crim. App. 2013), "... This Court has recognized that, even if an application does not meet the requirements of Section 4(a)(1), a subsequent application for writ of habeas corpus may overcome the procedural bar of Article 11.07, §4, if an applicant can show a constitutional violation satisfies the requirements of subsection (a)(2), an application must accompany the constitutional-violation claim with a prima facie claim of actual innocence." In the instant case, A show that the Petitioner could not go through or fit through the laundry

### Reasons For Granting The Petition

Chute stated sufficient facts of a PRIMA FACIE claim of actual innocence, BECAUSE had a JURY SEEN OR HEARD that the PETITIONER was too BIG to go through the laundry chute, NO REASONABLE JUROR would have found the PETITIONER guilty BEYOND A REASONABLE DOUBT. The TEXAS COURT OF CRIMINAL APPEALS dismissal without a written order is in conflict with this Court's decision in Johner v. Delo, 513 U.S. 288 (1995) BECAUSE the TEXAS COURT OF CRIMINAL APPEALS failed to review the merits of the PETITIONER's procedurally barred constitutional violation of ineffective assistance of counsel, which the PETITIONER pled PREVENTED PETITIONER FROM PROVING he was ACTUALLY INNOCENT at trial. SEE, House v. Bell, 547 U.S. 518 (2006). This Court should GRANT the petition herein, AND REMAND this case back to the TEXAS COURT OF CRIMINAL APPEALS FOR REVIEW of PETITIONER's procedurally defaulted claim of INEFFECTIVE ASSISTANCE OF COUNSEL.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

L.E. Thompson

Date: \_\_\_\_\_