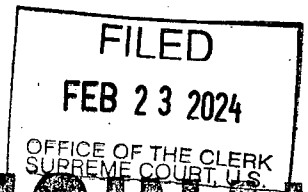


23-7025

No. _____



IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Stevie Wyre — PETITIONER
(Your Name)

vs.

Bobby Lumpkins — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS Court of Criminal Appeals
Court of Appeals, First District of Houston (Wyre v. State, 2014 Tex. App. Lexis 9726)
Trial Court of the 179th District of Harris County, Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stevie Wyre
(Your Name)
Wainwright Unit
2465 Prison Road #1
(Address)

Lovelady, Texas 75851
(City, State, Zip Code)

936-636-7321
(Phone Number)

QUESTION(S) PRESENTED

- 1). The pivotal question, is whether the State denied Appellant his Due Process, when it presented false or misleading testimony by the State's witness and without a Review of the Record, is whether the State Court, rejected, overlooked or ignored Appellant Claims of Constructive Denial of Assistance, that prejudiced Appellant in the proceedings, whether contrary to, or involves an unreasonable application of Federal law.
- 2). Whether the State Court clearly erred in its application controlling Federal law, is whether the Highest State Court (Court of Criminal Appeals of Texas) should have conducted an independent Review of the Record, to make a decision on Appellant Claims, whether a finding of an ineffective Assistance of Counsel Claim, is sufficient cause for failing to raise an "Arguable Objection" at trial, due to a silent and insufficient record, to overcome the strong presumption of counsel trial strategy, to formulate the issues for appellate Court review and the State's Obligation under Article 39.14(h)(K) and Brady v. Maryland, 373 U.S. 83, 87 (1963).

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:

- TEXAS Court of Criminal Appeals; Cause No. WR-83,236-09; Judgment entered: 12/15/2023
- Court of Appeals, First District of Houston, Texas; No. 01-13-00414 CR; Judgment entered: Aug. 29, 2014; *Wypse v. State*, 2014 Tex. App. Lexis 9726
- Trial Court of the 179th District Court of Harris County, Texas No. 1364440-F; Judgment entered: 9/14/2023 and 9/27/2023

RELATED CASES

Clarke v. State, 270 S.W. 3d. 573 (Tex. Crim. App. 2008)

Gifford v. State, 980 S.W. 2d. 791 (Reversed and Remanded by First Court of Appeals)

Johnson v. State, 624 S.W. 3d. 579 (2021) (Reversed by Court of Criminal Appeals and the Court of Appeals, First Dist. Houston)

Rylander v. State, 101 S.W. 3d. 107 (2003); 75 S.W. 3d. 119 (2002) (Reversed by Court of Criminal Appeals)

LUNA v. Cambra, 306 F.3d. 954; quoting *Delgado v. Lewis* 223 F.3d. 976, 982 (9th Cir. 2002).

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-9
REASONS FOR GRANTING THE WRIT	10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A : State Court's Original Answer on 9/14/2023; No. 1364440-F
APPENDIX B : State Court's Proposed Findings of Fact and Order on 9/27/2023; No. 1364440-F
APPENDIX C: Appellant Proposed Finding of Fact and Objection on 9/18/2023 No. 1364440-F
APPENDIX D: Tex. Court of Criminal Appeal decision on 10/19/2023 and 11/22/2023 No. 1364440-F, and WR-83, 236-09 (white card or post card)
APPENDIX E : Appellant's Motion for Rehearing and Reconsideration on 12/11/2023; No. 1364440-F; WR-83, 236-09
APPENDIX F: Tex. Court of Criminal Appeals decision on 12/15/2023 white card or post card in No. 1364440-F; WR-83, 236-09

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Bell v. Cove</u>	7
<u>Brady v. Maryland</u>	i
<u>Brecht v. Abrahamson</u>	11
<u>Bowe v. State</u>	6
<u>Calderson</u>	11
<u>Cannon v. State</u>	7
<u>Delgado v. Lewis</u>	8
<u>Ex parte Bieck</u>	8
<u>Fisher</u>	9
<u>Gifford v. State</u> (see additional page attached)	11, 7

STATUTES AND RULES

<u>Tex. Code Crim. Proc. Article 11.07 § 4(A-C)</u>	4, 8
<u>Tex. Code Crim Proc Article 39.1 § (h)(K)</u>	i
<u>Tex Gov't Code § 498.0045</u>	4, 8
<u>28 U.S.C. § 2254(d)(1-2)</u>	10

OTHER

<u>WyRE v. State, 2014 Tex. App. Lexis 9726</u>	4
<u>Court Record - C.R. II-5, 6, 7, 8, 9, 10)(C.R. III-12, 13)</u>	4

(Attachment to) Table of Authorities Cited

<u>Cases</u>	<u>Page Number</u>
<u>Hernandez v. State</u>	<u>5</u>
<u>Mata v. State</u>	<u>6</u>
<u>Milke v. Ryan</u>	<u>10</u>
<u>Miller v. Dietke</u>	<u>10</u>
<u>Robertson v. State</u>	<u>5</u>
<u>Strickland v. Washington</u>	<u>5, 6</u>
<u>Thompson v. State</u>	<u>5, 6</u>
<u>Tong v. State</u>	<u>6</u>
<u>United States v. Cronin</u>	<u>7</u>
<u>Vaugh v. State</u>	<u>7</u>
<u>Williams v. State</u>	<u>5, 6</u>

(End of Attachment)

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 _____ 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 D, F 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 Court of Appeals, First Dist. of Houston and Trial Court of Harris County court appears at Appendix A, B to the petition and is

☒ reported at (Wuyl v. State, 2014 Tex. App. Lexis 9726); 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 10/11/2023 / 11/22/2023
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date: 12/15/2023, and a copy of the order denying rehearing appears at Appendix F.

☐ 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

5th Amendment - Due Process of Law

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor be deprived of life or property without Due Process of Law nor shall private property be taken for public use, without just compensation.

6th Amendment - Right 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 the witness against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of Counsel for his defense.

14th Amendment

No State shall deprive any person of life, or property, without Due Process of Law; nor deny to any person within its jurisdiction the equal Protection of the Law.

Texas Constitution Art. V § 5 - Jurisdiction of Court of Criminal Appeals.

(c) Subject to such regulations as may be prescribed by law the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas Corpus and in criminal law matters, writ of mandamus, procedendo, prohibition and certiorari. The Court and the Judge, thereof shall have the power to issue such other writs, as may be necessary to protect its jurisdiction or enforce its judgments. The Court shall have the power upon affidavit or otherwise to ascertain such matter of fact as may be necessary to the exercise of its jurisdiction.

STATEMENT OF THE CASE

Appellant, Wipe filed a post-conviction Application for writ of Habeas Corpus, Art. 11.07 § 4 (A-C) of the Tex. Code Crim. Proc. with Memorandum of Law and Brief and Affidavit of newly discovered evidence in Support. (at p 6 writ Application).

The State Court filed an Original Answer on 9/14/2023. And the State Court filed a Proposed Findings of Fact and Order on 9/27/2023. Both stated; the Application should be Dismissed as a Subsequent writ, Because the Appellant has Abusing Judicial Resources, under Texas Gov't Code Ann. § 498.0045 and Appellant has raise question of Law and Facts, that can be resolved by the Court of Criminal Appeals, upon Review of Official Court Records and without need for an evidentiary hearing.

Appellant filed a Proposed Findings of Fact, Objection to the State on 9/18/2023. . . Stating the State Court rejected, overlooked, and ignored Appellant Claim of Constructive Denial of Assistance of Counsel, due to a silent and insufficient record, where the trial Court abused its discretion, due to the testimony of the State's witness (Ms. Parker) at Court Record (C.R. II-5, 6, 7, 8, 9, 10) (C.R. III-12, 13) and the opportunity to file a New Trial Motion, where trial Counsel prejudiced Appellant in the entire proceeding for Appellate Court Review (see Wipe v. State, 2014 Tex. App. Lexis 9726) (Court of Appeals First District of Houston, No. 01-13-00414 CR).

Appellant Request A Motion for Rehearing or Reconsideration filed on 12/11/2023. Because the Factual or legal basis for the claim was unavailable on the date, Applicant filed the previous application and under the applicable standard, where the Applicant has to prove by a preponderance of evidence that the ERROR's contributed to his conviction or punishment.

Appellant contends, the Court of Criminal Appeals, failed to Review or failed to hold an independent review of the Record, due to the "white card or post card" as the Court decision of the matter.

Argument And Applicable Law

A. Standard of Review:

To prevail on an ineffective assistance of counsel claim the defendant must demonstrate by a preponderance of the evidence that 1). his trial counsel's performance was deficient and 2). A reasonable probability exist that, But for the deficiency, the result of the proceeding would have been different. . . . Strickland v. Washington, 466 U.S. 668, 687, 694, 104 S.Ct. 2052, 2064, 2068, 80 L.Ed. 2d. 674 (1984) (see also) Hernandez v. State, 988 S.W.2d. 770-74 (Tex. Crim. App. 1999): Holding Strickland standard applied to ineffective assistance of counsel claim regarding non-capital sentencing proceeding. . . . Under the first prong of Strickland, the defendant must show that his counsel's performance fell below an objective standard of reasonableness. . . . Robertson v. State, 187 S.W. 3d. 475, 483 (Tex. Crim. App. 2006); Thompson v. State, 9 S.W. 3d. 808, 812 (Tex. Crim. App. 1999). The second prong of Strickland requires the defendant to demonstrate prejudice, A reasonable probability that but for his counsel's unprofessional errors the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. at 2068; Thompson 9. S.W. 3d. at 812.

A reasonable probability, is a probability sufficient to undermine confidence in the outcome. Strickland 466 U.S. at 694, 104 S.Ct. at 2068. The Court indulge A strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance and therefore the defendant must overcome the presumption that the challenged action constitutes "Sound trial strategy" Id at 689 104 S.Ct. at 2065; Williams v. State, 301 S.W. 3d. 675, 687 (Tex. Crim. App. 2009).

The Court review is highly deferential to counsel and The Court do not speculate regarding counsel's trial strategy. *Bove v. State*, 77 S.W. 3d, 828, 833 (Tex. Crim. App. 2002) if the record is silent regarding the reason for counsel's conduct as it usually is on direct appeals, then the record is insufficient to overcome the presumption that counsel followed a legitimate trial strategy. *Tong v. State*, 25 S.W. 3d, 707, 713-14 (Tex. Crim. App. 2000) (holding counsel's failure to object to an "arguable objection" as testimony and evidence was not ineffective assistance of counsel, when the record was silent as to counsel's strategy) (see) *Alata v. State* 226 S.W. 3d, 425, 431 (Tex. Crim. App. 2007) (rejecting the Court of Appeals' conclusion that there was "no conceivable reason for trial counsel's action and stating that because the record was silent on this point, a defendant has to rebut the presumption that trial counsel's decision was in some way-be it conceivable or not reasonable).

Without the trial counsel's explanation, the reason is insufficient to evaluate whether counsel's assistance fell below an objection standard of reasonableness (see) *Tong*, 25 S.W. 3d, at 713-14 (holding counsel's failure to object to "arguable objection" where testimony and evidence was not ineffective assistance of counsel, when trial records was silent as to counsel's strategy) (see) *Thompson*, 9 S.W. 3d, at 813 (holding that the record must affirmatively demonstrate alleged ineffectiveness, as Appellant has to overcome the strong presumption that his counsel's conduct was based on a legitimate trial strategy); (see) *Shuckland*, 466 U.S. at 689, 104 S.Ct. at 2065; *Williams*, 301 S.W. 3d, at 687.

Additionally, Before the Court may conclude that Counsel was ineffective for failing to make an objection, Appellant must show that the trial Judge would have erred in overruling the objection. *Vaughn v. State*, 913 S.W. 2d. 564, 566 (Tex. Crim. App. 1996) quoted in *Gifford v. State* 980 S.W. 2d. 791 (has trial counsel objected).

Appellant contends, the Strickland Analysis does not apply when prejudice is presumed. (see *United States v. Cronin*, 466 U.S. 648, 659, 104 S.Ct. 2039, 2047, 80 L.Ed. 2d. 657 (1984)). if a defendant can demonstrate that his Counsel entirely failed to subject the prosecution case to an meaningful adversarial testing" such that there was Constructive Denial of Assistance of Counsel, then prejudice is legally presumed (see *Cannon v. State* 252 S.W. 3d. 342, 349-50 (Tex. Crim. App. 2008) (citing) *Cronin* 466 U.S. at 658-59, 104 S.Ct. 2039, 2046-47); (see) *Bell v. Cove* 535 U.S. 685, 696-97, 122 S.Ct. 1843, 1851, 152 L.Ed. 2d. 914 (2002) noting that under *Cronin*, defense counsel's failure to test the prosecution case must be complete before prejudice is presumed.

In the Instant Case,

Due to Appellant filing, his Application for writ of habeas Corpus, 11.07§4(a-c) for Case No. 136444D-F (see writ at p.6) with attached Memorandum of Law and Brief with Affidavit in Support of Appellant Claim of Constructive Denial of Assistance of Counsel, due to a silent and insufficient record at p. 2, 3, 4 5 of the Memorandum of Law and within the (holding) of the Court of Appeals, First District of Houston, Texas No. 01-13-00414 CR; *Wypre v. State*, 2014 Tex. App. Lexis 9726 and within Court Record (Official) at (C.R. II- 5, 6, 7, 8, 9, 10) (C.R. III-12; 13) where Appellant

Obtained and presented newly discovered evidence of misconduct of the CPS Agency "Caseworkers and the former Assist. DA. Rachael Palmer, that contributed, to why Trial Counsel failed to take the actions to be an Effective Assistance Counsel, that prejudiced Appellant in the entire proceedings of the 6th and 14th Amendment of the United States Constitution and Texas Constitution Art. I § 10... for Appellate Court Review or any Court Review, to evaluate whether Counsel's assistance fell below an objection standard of reasonableness.

Appellant contends, it would be contrary to, or involve an unreasonable application of Federal Law, determine by Supreme Court, where the State Court Original Answer and Proposal Findings of Fact Order, to Dismissed Appellant's Application Writ No. 136440-F, as Abusing Judicial Resources, under Tex. Gov't Code Ann. § 498.0045... The Court of Criminal Appeals hold that Tex. Gov't Code § 498.0045 (HN7) does not apply to Article 11.07 habeas Corpus proceedings... (See *Ex parte Rieck*, 144 S.W. 3d, 510... As stated, the Court conclude that the legislature did not contemplate its use in that context.

Also, Appellant contends, where the Court of Criminal Appeals decision in this matter violates their own, standard of Review and De Novo Review, where the Court's Answer byway of "white card or post card" as stated, it must conduct and independent Review of the record to determine whether the State Court clearly erred in its application Controlling Federal Law (alteration is original) (quoting) *Delgado v. Lewis* 223 F.3d, 976, 982 (9th Cir. 2000); as stated in *LUNA v. Cambron* 306 F.3d, 954 at [HN4] the lack of a reasoned explanation is relevant (... 11) to the Court's scope of review, when the Court are confronted with a State Court's "post card denial" such as the one issued by the Supreme Court of California in this case, the Court have

nothing to which the Court can defer at (3), Fisher 263 F.3d at 914. Accordingly the Court must conduct an independent review of the record, to determine whether the state Court clearly erred in its application of controlling federal law.

REASONS FOR GRANTING THE PETITION

As stated, under the AEDPA of 1996, Petitioner contends, if he is to gain relief in a habeas corpus proceedings, it is no longer sufficient to present a valid claim of constitutional dimension, the petitioner must show that the state Court decision, to reject, overlook or ignore Appellant Claim in the Instant Case No. 1364440-F was contrary to, or involves an unreasonable application of clearly established federal law and was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding. 28 U.S.C. § 2254(d)(1 and 2). This standard, appears to require a showing that the state Court decision is not merely wrong, but contrary to, and unreasonable. . . (see *Milke v. Ryan* 711 F.3d 998; (*Miller v. Dretke* 420 F.3d 356). Appellant contends, this Standard of Review, apply's to the instant Case No. 1364440-F (Case No. NR 83, 236-09 and the (Holding) *Wynne v. State*, 2014 Tex. App. Lexis 9726. with respect to this Court.

CONCLUSION

Therefore, whatever type contents before any potential claim is discarded, the issues should be carefully studied to determine, if it can be framed in a manner that present a federal question. Furthermore, it is not sufficient to show federal constitutional error, but to demonstrate that the errors had substantial and injurious effect or influence in determining the verdict. *Brecht v. Abrahamson* 507 U.S. at 619 (Calderon 525). The petition for a writ of certiorari should be granted.

AS VACATED of judgment, conviction and sentence

Respectfully submitted,

Jerie Flyre #1858012

Date: February 20, 2024