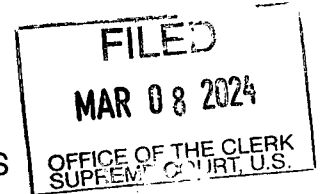


No. 23-7037

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



BILLY JOE KING

(Your Name)

— PETITIONER

vs.

BOBBY LUMPKIN

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BILLY JOE KING

(Your Name)

12071 FM 3522

(Address)

Abilene, TX 79601

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

PETITIONER has been raising the issue of his diminished mental capacity since pretrial. However, his trial counsel and lower courts state that the PETITIONER has not met his burden of proof. Prior to trial, PETITIONER told his trial counsel that he is "borderline retarded". Trial counsel even confirmed this statement in his affidavit and also acknowledged that the PETITIONER exhibits a diminished capacity in understanding. The record also reflects that the PETITIONER has almost no understanding of what was taking place at trial.

PETITIONER raised a claim of ineffective assistance of counsel against his trial counsel for not requesting a competency hearing after PETITIONER admonished his mental state to him. PETITIONER knows nothing of the law and his rights and lacks the understanding to even comprehend them. PETITIONER would had met the preponderance of evidence standards required to move the court to order a competency hearing/evaluation. But trial counsel felt PETITIONER did not meet the "insanity" criteria nor would it had benefited his defense. Meeting the requirements to argue competency on habeas is clear and convincing evidence and is much more difficult to prove, especially for a mentally challenged indigent inmate.

The questions herein were not found answered in any lower court rulings: Is there a consensus amongst trial counsels where they agree as to what is "sufficient" when describing their clients' ability to consult with them?

And is there a silver lining for counsels to say whether or not a client has a "rational degree of understanding"? PETITIONER feels as if these standards may vary from one lawyer to another. This belief raises the issue where if PETITIONER had a different counsel, that individual would had moved the court to order an evaluation.

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

- State of Texas v. Billy Joe King, No. 2017-2129-C2, From the 54th District Court of McLennan County, Texas. Judgment entered
- Billy Joe King v. State of Texas, No. 10-19-00280-CR, From The Court of Appeals of Texas for the 10th District, Judgment entered April 21st, 2021
- In re King, No. PD-0412-21, From The Court of Criminal Appeals of Texas, Judgment entered, October 20th, 2021
- Ex parte King, No. WR-93,515-01, From The Court of Criminal Appeals of Texas, Judgment entered March 9th, 2022
- Billy Joe King v. Bobby Lumpkin, No. 6:22-CV-741, From The United District Court for The Western District, Waco Division, Judgment Entered June 23rd, 2023
- Billy Joe King v. Bobby Lumpkin, No. 23-50512, From The United States Court of Appeals for The Fifth Circuit, Judgment entered January 5th, 2024

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-5
REASONS FOR GRANTING THE WRIT	6-8
CONCLUSION	8

INDEX TO APPENDICES

- APPENDIX A *Decision of The United States Court of Appeals for The Fifth Circuit Denying COA*
- APPENDIX B *Decision of The United States District Court for The Western District, Waco Division Denying Federal Habeas §2254*
- APPENDIX C *Decision of The Court of Criminal Appeals of Texas Denying State Habeas art. 11.07*
- APPENDIX D *Decision of The Court of Appeals of Texas*
- APPENDIX E *Decision of State Trial Court*
- APPENDIX F *Decision of The Court of Criminal Appeals of Texas Denying Review.*

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Cooper v. Oklahoma, 517 US 348 (1996) 6

Dusky v. United States, 362 US 402 (1960) 6

Johnson v. Estelle, 704 F.2d 232 (5th Cir. 1983) 6

STATUTES AND RULES

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 King v. Lumpkin, 2024 U.S. App. LEXIS 344; 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 B 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 C 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 10th District Texas Appellate court appears at Appendix D to the petition and is

☒ reported at King v. State, 2021 Tex. App. LEXIS 3001; 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 January 5th, 2024.

☒ 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 Mar. 9th, 2022.
A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. V - No person shall be deprived of life, liberty, or property, without due process of law;...

U.S. Const. Amend. VI - The accused is to have the Assistance of Counsel for his defence

28 U.S.C. § 2253(c)(2) - An Appellant is entitled to a Certificate of Appealability if he makes a substantial showing of the denial of a Constitution right.

Tex. C. Crim. Proc. Art. 46B.003

- (a) A person is incompetent to stand trial if the person does not have:
 - (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or
 - (2) a rational as well as factual understanding of the proceedings against the person.
- (b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

STATEMENT OF THE CASE

Petitioner was charged with two counts of Continuous Sexual Abuse of a child in the 54th Judicial District Court of McLennan County, Texas. Prior to trial, Petitioner expressed his lack of understanding to his appointed trial counsel by stating he was "borderline retarded." Trial counsel took no action though he admitted that Petitioner displayed a diminished capacity. Petitioner was indigent at the time and had no understanding of the law nor how to obtain what was required to show his counsel and the trial court that he may have been incompetent.

Trial commenced, Petitioner did testify. The jury found Petitioner guilty on both counts and Petitioner was sentenced to serve 99 years on each count with no option for parole. Petitioner filed his notice of appeal and subsequently sent a timely appellate brief to the Court of Appeals of Texas for the Tenth District in Waco, Texas. On appeal, Petitioner raised several grounds pertaining to sufficiency of evidence to one charge against him and a defect in the indictment pertaining to a location/venue issue that should have raised a jurisdiction issue at trial, which no objection was made. One issue on whether trial court erred in refusing to submit a limiting instruction. Another issue raised about Hearsay. And the last issue was about reinstating the "Factual Sufficiency" review and why Petitioner ought to have one. All five issues were overruled and his convictions were affirmed on April 21st, 2021.

Petitioner then timely filed a petition for discretionary review. His petition was refused on October 20th, 2021. Then Petitioner filed a state habeas corpus under art. 11.07 of the Tex. C. Crim. Proc. on December 17th, 2021. Petitioner raised five grounds in his state writ. Ground One was a claim of ineffective assistance of counsel for not understanding the law. The second ground was an ineffective assistance of counsel claim for not understanding a specific Rule of Evidence. The third ground was ineffective assistance of counsel for failing to uncover and present evidence of [Petitioner]'s mental retardation. The

Fourth Ground was about another ineffective assistance claim for failure to investigate several other prior sexual assault/abuse claims. And the Fifth Ground was one more ineffective assistance claim for failing to object to an unsolicited testimony from La Tasha Mallett, a witness for Petitioner at trial. Petitioner's trial counsel did respond to these claims by submitting an affidavit on January 27th, 2022. On March 9th, The Texas Court of Criminal Appeals denied Petitioner's habeas corpus without a written order on the findings of fact and conclusions of law submitted by the trial court.

Petitioner carried two grounds from his state writ to a Federal writ under 28 U.S.C. § 2254. Ground one was why the State's decision to deny Petitioner relief was contrary to Supreme Court precedent holding that his right to have his counsel reasonably represent him by moving the court to order a competency hearing was denied him. The second ground was about his trial counsel's untimely objection to La Tasha's unreasonable statement, whether the State court's denial of relief was also contrary to Supreme Court's precedents or an unreasonable application of the law. Petitioner's § 2254 was denied by the United States District Court for the Western District, Waco Division on July 1st, 2022.

Petitioner then subsequently filed his notice of appeal to the Federal District Court and timely filed his Certificate of Appealability to the United States Court of Appeals for the Fifth Circuit only objecting to the Federal District's denial of his ground pertaining to the neglect of his incompetency. Petitioner's COA was denied on January 5th, 2024.

Petitioner now appeals to this High Court in good faith and in a timely fashion

REASONS FOR GRANTING THE PETITION

There are safeguards provided for those being persecuted who cannot reasonably defend themselves because they are simply incompetent to handle such matters like engaging in discussions with a lawyer and actually understanding what is being discussed and what he/she is being charged with and what his/her rights are and how he/she wishes to proceed. *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996).

The two part standard is well known whether a defendant is capable to stand trial, is he competent? Does he have the "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and, secondly, "whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960).

According to *Johnson v. Estelle*, 704 F.2d 232, 238 (5th Cir. 1983) this threshold is "extremely heavy." However, there is no known consensus as to where the threshold is held. One lawyer can agree that his client displays enough diminished capacity to raise concerns as to whether or not his client is incompetent while another lawyer may gauge the same client differently. Where is the silver lining for what a reasonable degree of understanding and a reasonable and factual understanding of the proceedings against him?

Petitioner was never seen by a counselor or psychiatrist. He claims to have no records from MHMR to furnish as proof. Petitioner only has his own testimony.

Mr. Bennett, Petitioner's trial counsel argued how utilizing insanity as a defense would had only done Petitioner more harm, especially at sentencing. Petitioner argued in his federal habeas that that was only one of several other options that

Mr. Bennett could had pursued had he made any attempt to have Petitioner evaluated. But Mr. Bennett relied on his own opinion, in spite of what Mr. Bennett knew about Petitioner.

Petitioner went at lengths to show that Mr. Bennett provided ineffective assistance of counsel on that note. Mr. Bennett even admitted that Petitioner admonished him about his mental deficiency and Mr. Bennett further admitted that Petitioner displayed a diminished capacity. To what degree must be met before a lawyer ought to move the court to hold a competency hearing or to have him evaluated.

In all the cases pertaining to competency evaluations, all those involved had been evaluated in one way or another. Some were evaluated several times. The Petitioner was not evaluated at all. He had no cognition to the proceedings before him. He thought he was going to go home. The Petitioner had help from other inmates to file the previous applications and petitions, even this one because he cannot understand the law or how his rights were stricken from him.

One inmate will ever testify on his behalf about his diminished capacity and how far it goes. The Petitioner asked him what the word "Relief" meant when trying to read his §2254.

The Petitioner is not arguing this cause to waste the Court's time or to no chatantly exhaust his due diligence. He seeks justice by receiving the fairness

of the rights awarded him. And to obtain that Petitioner asks this Court to explain to what degree must one possess a "sufficient" ability to understand and to consult with his lawyer?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Belle King", written over a horizontal line.

Date: March 7th, 2024