No. 23-7300

IN THE

SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO TURCIOS — PETITIONER
(Your Name)

vs.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF CRIMINAL APPEALS OF TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Juan Francisco Turcios
(Your Name)

3 Jester Road TDCJ-ID Jester III
(Address)

Richmond, TX 77406
(City, State, Zip Code)

none
(Phone Number)

QUESTION(S) PRESENTED

(1). In accordance with Judicial Discretion,once the trial Judge accepted and approved the plea bargain agreement for the maximum of ten years,did the trial court erred by sentencing petitioner to a twenty years?.

(2).The Texas Court of Criminal Appeals,and Federal Constitution, once the possible maximum is set,the trial court must honor it?.

(3).The Supreme Court of the United States has no related cases that shows "once the trial court bound itself in the plea bargain as to the maximum possible sentence,the court must carry out such sentence"?.

(4).The Court of Appeals,erred by ignoring the plea bargain agreement,specially when there was no initials on the cross-out,and also ignoring the Code of criminal Procedure art.26.13(a)(2)?.

(5).The trial Judge knew of the conflict of interest,and that defense counsel was working biased with petitioner,but did nothing to resolved the issue,was the court abusing its discretion?.

(6).The trial court approved and accepted the plea bargain,but the court continue admonishing petitioner wrong,and defense counsel never aid ,or correct the court,but instead render ineffective assistance,was this failure of the court? or the defense counsel?, or both?.

(7).The Court of Criminal Appeals as the maximum authority in criminal law,did the court erred by not addressing petitioner claims?,or was this abused of judicial discretion?.

(8).Petitioner present the appeals court with 3 or 4 petitions for writ of mandamus,to correct petitioner's sentence,but the court abused its discretion by requesting items not needed,is this right?.

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

TURCIOS v.STATE,2013 Tex.App.LEXIS 12443

IN RE TURCIOS,2014 Tex.Crim.App.LEXIS 442

In re TURCIOS,2014 Tex.Crim.App.LEXIS 448

EX PARTE TURCIOS ,2015 Tex.Crim.App.Unpub.LEXIS 389 & 530

TURCIOS v.DAVIS,2018 U.S.DIST.LEXIS 149608

In re TURCIOS 2020 Tex.Crim.App..Unpub.LEXIS 133

In re TURCIOS,2020 Tex.App.LEXIS 6593

In re TURCIOS,2021 Tex.App.LEXIS 1317

Inre TURCIOS,2022 Tex.App.LEXIS 453

Inre TURCIOS,2023 Tex.App.LEXIS 161

In re TURCIOS, 2023Tex.App.LEXIS,9121

Turcios v.Davis,2018 U.S.Dist.LEXIS 148904

Turcios v.Lumpkin,2020 U.S.App.LEXIS 42465

TURCIOS v.LUMPKIN,142 S.Ct.568 (2021)

TURCIOS v.TEXAS,143 S.Ct.1763 (2023)

TURCIOS v.TEXAS ,144 S.Ct.40(2023)

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OTHER

(NOTE) Petitioner is a lay man of the law,please excuse as "B" stands for pages on the Reason for Granting.

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.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix B-6 to the petition and is

[ ] reported at WR-83,155-08; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ 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.

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).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was ~~January 10,~~ 2024
A copy of that decision appears at Appendix WR-83,155-08

[ ] 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

The wisdom of a constitutional provision [m]ay not be question (art.26.13(a)(2),nor can judicial policy be contrary to the express provisions of the Code of Criminal Procedure,or the provisions set forth on the constitution,however,if the meaning of the language of the Tex.Code of Crim.Proc.is clear and unambiguous,the effectivenes of the code must be given effect without regard to consequences.

Article § 11.07 Habeas Corpus,The Court of Criminal Appeals, [is] the only appellate court in Texas that possesses general ana unlimited power to issue writs of habeas corpus in criminal cases...Under the habeas corpus article of the Code of Criminal Procedure,the court of criminal appeals alone among the courts of Texas has authority to...release from...confinement persons who have been...finally convicted of noncapital felonies...such as illegal sentences,or confinement...that can be raised at any...time.

" 38 Tex. Jur. Extraordinary Writs § 181" (§181) An original proceeding for a writ of mandamus initiated in the trial court is a civil action subject to trial and appeal on substantiv issues and rules of procedure as any other civil suit. It is not a criminal action even though it may stem from a criminal proceeding and even though it may be available in a [c]riminal matter and be issued to ...compel in action in connection with a criminal case.,however as a criminal law matters must be carried out as proscribed by Texas Law.

STATEMENT OF THE CASE

Petitioner in his efforts to make this simple and economic must start from the top;

On September 14,2011,petitioner was arrested on suspicion of domestic-violence-later charged with aggvt/assault-w/weapon,and Brurglary of Habitation,before the criminal case took place,a Family Court,was held in which The Honorable Judge' was the act as [m]ediator, between petitioner and Maria Perez(the compplaint), in a quick review after 10 or 15 minutes the Judge caught Perez lying about many issues including the complaint, the Judge also noticed that Perez lodge a criminal complaint against petitioner,but the must relevant part of this issue is that Perez first cry telling the Judge that I have not seen her in more than two years,and that petitioner failed to support the two sons that he shared,this happen on February 2012,where the insident happen on February 27,2011.

On April 9,2012 a preliminary hearing was held,and after some 10 to 15 minutes the judge ask the prosecutor if she would offer probation,the prosecutor(Ms.Hawkins)reply my offer is for 15 years prison,then ask defense counsel(Mr.Johnson),to counter,in which he say 10 years,the trial Judge Teresa Hawthorne then said you want to talk it over with your attorney,where Johnson told the prosecutor defendant agrees to 10 years. The fact of this conversation is memorialized in the two plea bargain documents (F11-70886-P & F11-70896-P)the maximum sentence of 10 years,on 70896 for deferred adjudicated probation,and 70886-ten years TDCJ or confinement.

The Honorable Judge then approved and accepted the plea bargain upon her signature,as relevant part on the last page of the

reporters record,volume one,page 16 the Judge ask both the defense counsel,and the prosecutor if there was anything else;

THE COURT: State have anything at this time?
MS. HAWKINS: I'd just like it to be put on the record that my offer is for 15 years TDC.
MR. JOHNSON: I think you put on the plea bargain ten...

Under Texas Law,Criminal Caselaw, and Texas Code Criminal Proccedure,art.26.13(a)(2) it provide the following:

> (a) Prior to accepting a plea of guilty or a plea of nolo contendere,the court shall admonish the defendant of:
> (1)the range of punishment attached to the offense;
> (2)the fact that the recommendation of the prosecuting attorney as to punishment is not binding to the court.Provided that the court shall inquire as to the existance of a plea bargain agreement between the State and the defendant and ,if an agreement exist,the court shall inform the defendant whether it will follow or reject the agreement in open court and before any finding on the plea.Should the court reject the agreement,the defendant shall be permitted to withdraw the defendant's plea of guilty or nolo contendere;.

Petitioner cites and uses the following case to illustated,how he perceived his case;

> PERKINS v.COURT of Appeals for Third Sup.Jud.Dist,738 S.W.2d.276(Tex.Crim.App.1987)Overview. Relator trial judge agreed to the terms of a plea agreement between the state and defendant in which the maximum term of incarceration to be imposed by relator was set at 25 years.Under the agreement,relator was free to impose a lesser sentence.At sentencing relator sua sponte moved for and granted defendant a new trial.Respondent appellate court issued a writ of mandamus that ordered relator to specifically enforce the terms of the plea agreement and to enter judgment accordingly.id The court found that once relator accepted defendant's plea of guilty and approved the plea agreement,he was without a any authority or power to do other than specifically enforce the agreement.The court denied relator's petition for mandamus and ruled that

when defendant entered into a plea bargain agreement with the prosecutor and relator approved the agreement,and the agreement was not kept,the proper relief was either specific performance of the agreement,or withdrawal of the plea if requested by defendant.The court found that relator's action of sua sponte granting a new trial was void.

The fact that petitioner's case is [a]lmost identical as the one above,but because petitioner defense counsel its been very hard to overcome all the obstacles that follow the plea hearing,for exemple the law provides that the judge announces the maximum sentence attach to the case,in this case 10 years, but contrary to the law Judge Hawthorne after signing and accepting petitioner's plea bargain,she kept admonishing petitioner to 5-to 99 of life,neither defense counsel,nor the prosecutor corrected the judge,or perhaps the judge failed to read the contract that she had previously accepted and approved,[p]rofessional conduct suggest that competent representation under prevailing professional norms includes a bare minimum,communicating with the client,the court,any offers,pleas to expedite the process and saved resources.ABA standards provide "an attorney is require to act with reasonable diligence and promptness in representing a client".However, counsel never convey the court,or corrected the court,during the court wrongful admonishment,petitioner trial continue as it was no plea bargain took placed.

Defense Counsel Mr. Paul Johnson,keep providing incorrect information through-out the trial,and during appeals process. Petitioner's case passed to P.S.I. as it was the possibility of probation in the horizon,however, during petitioner's interview for probation,one of the officers require petitioner

to confess as to what happen during the crime(basicly telling your side of the story)the probation officer concluded that both petitioner and Perez were guilty,then the officer ask If you wasn't guilty why did you plead guilty?.

Petitioner answer was; I didn't have any help from my court appointed counsel Mr. Johnson,Johnson was very clear as he said "I'm not goin to help you,just plead guilty."

Petitioner realized he was [d]oomed,he try to lower his bond, as he filed at least five motions to lower his bail,in which Johnson ask petitioner in one occasion; Why do you want to lowwer your bond? Petitioner reply to get money for a good lawyer. Johnson reply, No because you may run. But contrary to Johnson's assertions petitioner was out on bond for a State-Jail Felony.

During sentencing stage,as it is part of the reporters record, on volume four,page 20 the court inquire as follows;

PROSECUTOR: So I just think for the safety of all parties involved,more so those two children that she'll be responsible for,the State is asking that you sentence the defendant to the TEXAS DEPARTMENT OF CORRECTIONS.

THE COURT: Okey. And just because this has been in a three-part series,I just want to make sure that we're correct on the fact that he had two enhancement paragraphs and you agreed to drop those?

MS. HAWKINS: Yes, ma'am.

THE COURT: And I granted that.

Mr. Turcios, can you please stand. I wish I hadn't granted that motion...

The court lamented that she had granted the quashed enhancements(although the enhacements were old,and for probation,and could not be use)the court failed to adhere to art.26.13(a)(2); as "once the court bound itself ,is bound to carry the terms of the plea bargain it approved,and accepted."

The prosecution in accordance with the Supreme Court findings in Santobello must also inform the court of their promise,and the maximum sentence. The prosecutor obligation is to scrupulously comply with the letter of the

the plea bargain that also bound to carry,it means that even technical compliance will not suffice if the prosecutor otherwise "undercut[s] the plea agreement".

The comittment it has its burden on all members of the court, as neither the prosecutor Ms. Hawkins, or Defense counsel Mr. Johnson alerted,signal,inform,or objected to the court upon sentencing petitioner to the wrong sentence of 20 years. The trial court must recognized the importance of the signed plea bargain documents,as it is the scheme of justice and the concomitant for the court to adhere to these strict compliance and hold the prosecution to the most meticulous standard of of both promise and performance,the court failure to adhere to its promise requires reversal ,but this was just the beginning of a long tortuous process that it look like have no end,defense counsel Mr. Johnson then kept obstructing petitioner like an enemy,as petitioner filed a notice to appeal,with the help of other inmates in the county jail on April27,2012. Petitioner filed a total of 3 notice's to appeal,that the Dallas District Attorney try to corrupt,finnally on November 7,2012,and after loosing the grace period to correct the sentence without appeal,the trial court appoint a (civil law) lawyer Mr. Matthew J. Kita,although Mr. Kita had good intentions he had no experience on criminal-law,or one can said criminal law wasn't his forte,Mr.Kita never touch the plea bargain,although it was part of the Trial Court Clerk Record,and the direct appeals Clerk's record.

Petitioner was on a quick-sand as the Fifth District Court of Appeals at Dallas after replacing the facts on petitioner's

trial,in its opinion the Appeals court went on in saying;

(" Without the benefit of a plea bargain agreement,Juan Francisco Turcios pleaded guilty to the offenses of burglary and aggravated assault.The trial court sentence him to twenty years improstment..... FACTUAL BACKGOUND: Before he was arrested for these offenses,however,a-pellant was involved in a serious motorcycle accident.On the schedule trial date,appellant appeared in court on cutches,waived his right to a jury trial,and entered an open plea og guilty to both offenses.At the sentencing hearing over two weeks later,appellant was using a walker.A-pellant testified that "[The doctors]"could not finish all surgeries because I, you know came up with diabetes and high blood prssure and,you know,a whole lot of other things.")

Contrary to the above,petitioner only testified at preliminary hearing,of the facts to the accident,he could not walked,as the doctors at Parkland Hospital restrict him to "no weight barrier" he could not walk instead use a wheel-chair on that hearing,fur-ther,the appeals court had copies of the two plea-bargain documents which reflect the maximum of ten years, petitioner vol-untarily enter Parkland Hospital on June 2011,and was diagnosed with type two diabetes,he later was discharged,then the fatal accident took place on June 30,2011,petitioner was on induce-coma for 3 weeks,how bad can petitioner's luck-go ,after the accident,and after labor-day weekend,where he took the two baby boys to the beach,petitioner got arrested,how bad-can the luck be,petitioner original lawyer-and friend Mr.Jim Moore was running for Dallas Mayor,for unknown reasons Jim get disbar,then Paul Johnson gets appointed,in short in less than "one"1 year pet-itioner goes from a normal citizen to broke-down,beaten,convi-cted,in prison it is like a horror-story.

Petitioner trial counsel Mr.Paul Johnson,after trial, introduce an affidavit of facts which reflects how-much hate he have for

petitioner counsel's affidavit,where for instance (" Mr.Turcios was very difficult to represent and deal with throughout the entire of the case...I met with Mr.Turcios on several occasions and discussed all aspects of his case fully. "). Counsel means encouraging petitioner to plead guilty,however unlike counsel statement petitioner didn't even know what he was in jail for,a proof of this is a letter sent to the Dallas District Clerk,(the letter was redacted by a fellow inmate)where petitioner is asking the clerk why he was in jail.

Counsel on his affidavit stated that he met with petitioner on several occasions...contrary to that assertion petitioner,can proved with the help of the clerk's record that counsel was acting contrary,as petitioner told the trial judge on a motion to reduce bail,and a personal memo ,"counsel seeks only plea agreement and show no interest on helping me or my cause". I pray that you honor replace counsel. Signed March 28,2012

Unlike defense counsel,petitioner can "proved beyond reasonable doubt" that counsel never try to help petitioner,that after petitioner was threaten by the Court with life in prison for a crime he did not commit chose to plead guilty for 10 years,petitioner presented every court,hereafter with the same facts,but once he reach the Fifth Circuit on his brief for the court, petitioner introduce the facts to the plea bargain agreement,but on its opinion ,2020 U.S.App.LEXIS 42465,The Honorable GREGG COSTA,in his opinion for the court [2]That counsel was ineffective,laboring under conflict,and that the district court breached the plea agreement,and that his sentence is void,Turcios motion to supplement the record on appeal is denied.COA is DENIED.

The Court of Criminal Appeals of Texas ,held that a [d]efect which renders a sentence void may be raised at any time.(citing Ex-Parte Beck,1996 Tex.Crim.App.LEXIS 71("We held that where the punishment pursuant to a negotiated plea bargain agreement exceeded the statutory maximum,the proper relief was to set aside the judgment and remand the applicant to the Sheriff of the convicting county to answer the indictment.In the instant cause the trial court has found that the guilty plea and subsequent conviction were the result of a plea bargain agreement.Thus,the petitioner bargain for illegal sentence,therefore relief is granted in the cause is remanded to the 203RD J.D.C.of Dallas County.")

[I]ronically,the case above comes from the same court that sentence petitioner,therefore,if ? a fair minded court,or jurist will reverse a sentence unless there is an abuse of discretion or some defect in the sentencing procedure,but petitioner point that no [C]ourt after the illegal sentence was imposed ever held a hearing,consider the law of art.26.13(a)(2),or the plea bargain documents,although the documents were tamper with,and as a relative insident during the Court of Criminal Appeals remand on IAC issues,the State,or Dallas District Attorney's Office send on its reply to cause (70886) a back copy,but not the front of that plea bargain agreement,here included. In petitioner "breached of plea bargain"the plea agreement obligate the State to follow the sentencing recommendation,the Court to executed the recommendation from the State,and the defense counsel to advocate for petitioner,correcting the Court,when the Court erred in its admonishing ~~wrong~~,when the court

consider the illegal enhancements,or before the trial even took placed and petitioner was requesting a bond reduction,defense counsel could have told the court "I don't like petitioner due to the fact that initially when ask petitioner about him self as [o]ne of most must notorious lawyers in Dallas,petitioner told counsel he did not believed that,as every where petitioner went Jim Moore,Tom Cox and other attornies names came up but not Paul Johnson".

Petitioner and Johnson got in a heated argument about the P.S.I. report when Johnson read it was furious,and told petitioner "You're not going home today I make sure of that."

In short some plea agreements obligate the prosecutor to ramain silent,in petitioner's case however,the prosecutor Ms.Hawkins did not remain silent but advocate to harsher sentence,than the one she agreed-to,this is contrary to all Supreme Court precedents like LAFLER v.COOPER,566 U.S.156 MISSOURI v.FRYE,566 U.S. 134 .

In order to prove prejudice a petitioner who claims that he plead guilty for a "capped"sentence,and proceed to trial as it no plea bargain took place,and due to his counsel deficient performance stood trial with grossly adversary consequences,and such consequences never been address it amounts to "grossly miscarriage of justices",where petitioner still suffer the injuries cause by ~~that~~ defense counsel,as he been incarcerated past the maximum term ~~that~~ he agreed,and where in Texas the Board of Pardons and Paroles does not work,even when petitioner notified the Board that he is illegally incarcerated.

In Lafler v.Cooper,supra the petitioner was prejudice by counsel's ineffective advised,he would have accepted the plea offered.

In MISSOURI v.FRYE,supra the court ,found that due to counsel's the plea was never communicated ,due to counsel's ineffectivness. Because counsel allowence the plea offer to expire,but for counsel's errors he would pleaded guilty and accepted the plea. In SANTOBELLO v.NEW YORK,92 S.Ct.495(1971)The judgment was vacated and the case remanded for reconsideration.

In petitioner's case as the Court of Criminal Appeals of Texas held a "petitioner who claims or sits on illegal sentence can challenge it at any time...further the Court insisted that the petitioner can also challenge by using a "Nunc Pro Tunc Motion" a "writ of Mandamus", or article 11.07.State Habeas.
Petitioner filed all of the above,a total of five Nunc Pro Tunc, three Writ of Mandamus,and two State Habeas Corpus.
The trial Court has never answer or consider any of the Nunc Pro Tuncs,the Fifth District Court of Appeals,in four writs,the court uses "Civil Law"instead of "criminal Law" as require,to dismissed,DENY,or Denied petitioner.
The Court of Criminal Appeals a total of eight writs, all of them "Denied without written Order."
No Court "has ever address the illegal sentence,plea bargain agreement,plea documents,or ineffective assistance claims ,on the plea bargain agreement."
Petitioner points out that as defense counsel on April 9 ,2012 at the end of the hearing...agreed with all members of the court that petitioner agreed to a "TEN YEARS ON THE PLEA BARGAIN.". In defense counsel's affidavit,he is the one who changed his mind not petitioner,as there is no proof that the Court held another

hearing,or that the trial court executed a different plea agreement other than the one for ten years.

Petitioner is fighting to stay alive,and for his freedom,as on ~~on~~ the 6th day of November,2023 requested the Honorable Rachel "Rocky" Jones an appointment of counsel,in January petitioner send his daugther in Dallas a copy of that petition,which she e-mailed it to the 203rd Judicial District Court of Dallas County. On the 6th day of February the Honorable Judge Jones answer the petition as follows "ORDER" On this day came to be considered defendant's pro se "Motion for Appointment of counsel on Behalf of Relator Arising from the above felonies(F11-70896-P F11-70886-P),to sit as a Special Master to Aid Relator Over violations Steaming [sic] from Violated Plea Bargain Agreement." Having considered the motion and relevant authority,the Court is of the opinion that said motion should be denied. Signed the 6th day of February,2024 Rachel "Rocky"Jones 203rd J.D.C.Dallas. Petitioner will not give up,as in his efforts ask the Supreme Court of Texas,to clarify for the Fifth District Court of Appeals the difference between "Civil Law" and "Criminal Law Matters" petitioner cites the Court with the following;

> In re Reece,341 S.W.3d.360(Tex.Sup.Ct.2011)(The Court was presented with a question arising from the bifurcated nature to provide a forum for a civil litigant who is deprived of liberty pursuant to a court's contempt order,and the Court of Criminal Appeals has declined to exercise its habeas jurisdiction.<at-374>It is difficult to imagine a circumstance more compelling without a remaining procedural safeguard for challenging his confinement.Certainly,a result of our inaction is a potential waste of judicial and litigant resources as the cases travel between this

Court and the Court of Criminal Appeals,with neither court exercising jurisdiction to consider the merits of Reece's petition. But the further consequence of Reece's lack of an adequate appellate remedy in this matter s his [u]nlawful confinement id: the relator's very liberty interests are at stake with no other procedure to challenge his confinement in our state court <at-377> Because the trial court abused its discretion in confining Reece for criminal contempt for acts of perjury occurring during a deposition and Reece has no adequate remedy by appeal,we conditionally grant the writ of mandamus and order the trial court to vacate the May 29,2009,and June 24,2009,contempt judgments against Reece.We are confident the trial court will comply,and our writ will issue only if it does not.

Petitioner on the 25th day of January,2024 requested the Supreme Court of Texas,under the above jurisdiction [d]efine for the Fifth District Court of Appeals at Dallas,the difference between writ of mandamus-over civil law,and writ of mandamus in a criminal law,although the court as it today March 19,2024 has-not yet address either the issue nor respond petitioner writ,its unknown what the court will decided.

Petitioner's [p]lea bargain,and all the issues relevant around the plea agreement "never been address by no court",as even the trial court has yet address,after all this writ that been filed in all different court's,State and Federal no Court has yet decided it...Why ?.

> ERICKSON v.PARDUS,127 S.Ct.2197(2007),"A pro se complaint,however,inartfully pleaded,must be held to less stringent standards than formal pleadings drafted by lawyers."

Petitioner presented all arguments needed to develop any doubt or case-law for legal error as the Dallas Court of Appeals,argued to denied every time as follows; (Relator is dismiss for want of jurisdiction,he should brough up this under 11.07.; [A]ccordingly,we deny relator's petition the trial court,must deny the petition if the court determines relator is not

entitled to the relief. [A]s relator's comments that this court erred by denying his most recent petition for writ of mandamus,this court lacks power to grant mandamus relief against itself,accordingly we dismiss relator petition for want of jurisdiction;/
[N]one of the documents included with relator's petitions are certified are certified or sworn copies. They are also incomplete in relation to the documents material to his claim for relief,accordingly,WE DENY RELATOR'S PETITIONS FOR WRIT OF MANDAMUS/.)(citing 2020 Tex.App.Lexis 6593/2022 Tex.App. LEXIS 453/,2023 Tex.App.LEXIS 161./2023 Tex.App.LEXIS 9121.)

All of the above cites pertain to petitioner style as Relator requesting for the Fifth District Court of Appealsthe Trial Court enforce the plea agreement that it was accepted,and by law must be honored(State and Federal).

Petitioner points out that while there is Supreme Court cases of broken plea agreements,unfullfil promises,this case will be important beyond the particulars facts ,as there is never been an agreed case,with document signed,and accetpted by the trial court,then violated to the extreme that no lower court wanted to address it, there is 0% of cases like this one. See

> BORDENKIRCHER v.HAYES,1978 U.S. LEXIS 56<at-361>.Whatever might be the situation in an ideal world,the fact is that the guilty plea and the often concomitant [p]lea bargain are important components of this country's criminal justice system<362>Properly administered,they can benefit all concerned.BLACKLEDGE v.ALLISON,431 U.S.63,71.The open acknowledgment of this previously clandestine practice had led this Court to recognize the importances of counselid during plea negotiations,BRADY v.UNITED STATED STATES,357 U.S.742,758,the need for public record indicating that a was knowingly and voluntarily made,BOYKIN v.ALABAMA ,395 U.S.238,242,and the requerement that a prosecutor's plea bargain promise must be kept,SANTOBELLO v.NEW YORK,404 U.S.257,262.The decision of the Court of Appeals in the present case,however,did not deal with considerations such as these but held that the substance of the plea offer itself violated the limitations imposed by the Due Process Clause of the Fourteenth Amendment.Cf.

The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.id,Its pre-eminent role is recognized by the admonition in the Constitution that:."The Privilege of the Writ of Habeas Corpus shall not be suspended...."U.S.Const.,Art.1,§9,cl.2. The scope and flexibility of the writ-its capacity to reach all manner of illegal detention--its ability to cut through barriers of form and procedural mazes-have always been emphasized and jealously guarded by courts and lawmakes.The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. [A]s Blackstone phrased it,habeas corpus is "the great and efficacious writ,in all manner of illegal confinement."(citing Harris v.Nelson,89 S.Ct.1082,1969 U.S.LEXIS 2161)

Petitioner argues that he was submitted to a double trial,as he had already pleaded guilty,the plea bargain was set,as to the maximum possible sentence,as opposed to the minimum,but for defense counsel he was hold to a "Double Trial",where the judge was the sole factfinder. " No person shall be subject for the same offense to be twice put in jeopardy of life or limb[.]" Petitioner was tried (although already plead for ten years)to a double trial,as it was unnecessary to exposed him to a greater sentence when a maximum of the sentence was already set. But the Court of Criminal Appeals,as the court portrait's " [T]he Court of Criminal Appeals of Texas is the only authorized 'criminal court to grant habeas relief in a criminal case." However,in petitioner's case the Criminal Court had steadily

refused to recognized petitioner's illegal sentence or plea agreement,or grant him relief ,but the court instead " denied without written order"(every time petitioner filed a writ,but if the State files any-motion it grant them as shown next.

> Rodriguez v.State,470 S.W.3d.823(Tex.Crim.App.2015)<at-825>Appellant was charged with ten counts of sexual assault of a child.Based on the advice of his counsel,he declined the State's plea bargain recommendation a ten-year sentence and proceeded to trial.After loosing and given ten life sentences and a twenty year sentence he was granted a new trial.Appellant pleaded guilty again stipulations of guilt,the trial judge rejected the plea agreement and advised appellant that he could withdraw his guilty plea and go to trial,or accept a 25 year sentence.Appellant rejected the offer,the Judge moved recuse herself on the basis of demostrated prejudice.The judge voluntarily recused herself,and a new judge was assigned to the case.Appellant filed another motion to require the State to re-offer the ten year deal.The new judge declared that the slate was wiped clean by the original judge's recusal but that she would accept a new agreement if one were reached.The State offered a plea deal of 25 years and Appellant accepted,pleading guilty to five of the counts in exchange of the waiver of the other five counts.The judge accepted the deal and signed the judgment of conviction.
> The direct appeals court then reversed the sentence based on Lafler, and Frye,asking the trial court to imposed the original ten year. The State then file "Petition for Discretionary Review"(PDR) The Court of Criminal Appeals agreed with the State<at-831>We reverse the decision of the court of appeals.The slate was wiped clean upon the recusal of the original trial judge and the court was entitled to start anew.The 25-year sentence that was offered by the State, agreed by Appellant,and accepted by the trial court is reinstated.

Petitioner could not agreed more with the court decision,but Why ? can the Court do in opinion like the one above as enough time lapsed and it is time for petitioner to be vindicated.

REASONS FOR GRANTING THE PETITION

Petitioner decision to continue seeking relief and vindication are not because of his continue illegal incarceration but also the Texas Courts failure to address the illegal incarceration, and resolved the plea bargain agreement,which was signed,approved ,accepted,and acknowledge at the end of the plea-hearing.
The Honorable Teresa Hawthorne,as well as the prosecutor Ms. Hawkins,and defense counsel Mr.Johnson acknowledge to the court reporter what the document reflects,as to the possible maximum of ten years.
The Texas Court of criminal Appeals acknowledge that if it is in fact a plea-bargain agreement signed and accepted by the Trial Court,and as a matter of illegal sentence can? be attack at any time.

> MOORE v.STATE,295 S.W.3d.329(Tex.CRIM.APP.2009)[*331]As a contract once both parties have entered knowingly and voluntarily into a plea bargain they are bound by the terms of that agreement once it is approved by the judge.id,Plea agreements may contain a wide variety of stipulations[*332]and conditions that allow the state to tailor conditions in order to reach agreement with the defendant.See e.g.BRUNELLE v.STATE ,113 S.W.3d 788(Tex.App-Tyler 2003,not pet.)The only proper role of the trial court in the plea-bargain process is advising the defendant whether it will "follow or reject"the bargain between the state and the defendant.TEX.CODE CRIM.PROC.art.26.13(a)(2)("the court shall inquire as to the existance of any plea barganing agreements between the State and the defendat in the event the such agreement,the state may not withdraw its offer.BITTERMAN v.STATE,180 S.W.3d 139,142(Tex.Crim App.2005)(citing ORTIZv.STATE,933 S.W.2d.102Tex.Crim.App.1996). If the trial court rejects the plea-bargain agreement,the defendant is,as a matter of right,allowed to withdraw his guilty plea,and the state may then withdraw its offer.TEX.CODE CRIM.PROC.art.26.13(a)(2)("Should the court reject any such agreement,the defendant shall be permitted

to withdraw his plea og guilty or nolo contendere".)...Only the State may offer or withdraw a plea bargainid.Because a plea-bargain agreement is solely between the state and the defendant,only the state and the defendant may alter the terms of the agreement; the trial court commits error if it unilaterally adds un-negotiated terms to a plea-bargain agreement. PAPILLON v.STATE,908 S.W.2d.621,624(Tex.App.BEAUMONT 1995 no.pet)(error accurred "when [the trial court] inserted additionall,non-negotiated terms into the negotiated plea bargain between the State and Appellant,and then made acceptance or rejection of said plea bargain contingent on whether or not appellant complied with said additional,non-negotiated terms.")

In petitioners case he pleaded guilty in exchanged for 10 years also a fine if? was probation for $2,500/no contact w/victim/sa,no affv(No Affirmative Finding Family Violence." .There was no other stipulation ,or statement within the plea bargain document saying for any reason the judge was agreeing to a different sentence other than the 10 years circle in the plea bargain agreement executed on the 9th day of April,2012. Petitioner after pleading guilty,and signed the plea document, and after the judge also signed it,defense counsel ask ,for a PSI[presentence investigation report](citing PERKINS supra,, 738 S.W.2d.at278.).(The record clearly reflects that petitioner /relatormade it clear to everyone that "the maximum punishment that [he] would be giving[ ]...would be 10 years pursuant to the State's plea negotiation." Vol.1 page 16 Reporters Records,signed and dated April 9th 2012.)

When petitioner reappeared in court for sentencing,the judge, sua aponte,set aside the punishment that been assessed and withd rew the petitioner's maximum for ten years and assessed twenty instead(citing Perkins at 281).

The Fifth District Court of Appeals,in its opinion corrupted more the true background of the case,when they replaced the plea bargain agreement with ["Without the benefit of a plea bargain],but as the Court on Perkins held. ("The court of appeals have mandamus jurisdiction virually identical to the Supreme Court of Texas,and the Court of Criminal Appeals[in criminal law matters]was prescient as to what this Court would eventualy hold when it decided the question whether the court of appeals,in criminal cases,had authority to issue writs of mandamus in criminal cases.")(Perkins at 281.)

The Court in Perkins then cited on SANTOBELLO v.NEW YORK.The reason for suggesting that the trial judge should absent for any participation during the plea barganing is to avoid judicial coercion or prejudgment of the defendant since such influence might affect the voluntariness of the defendant's plea.At-282. [*285]Given what this court has stated and held regarding specific enforcement of a valid plea bargain agreement,we find that those decisions placed a ministeria;l,mandatory,and non-discretionary duty on the trial judge specifically enforce the plea bargain agreement that was made by the parties and approved by the judge. Under the law,t[the judge]had no discretion about the matter,[he or she]was charged as a matter of law with enforcing the plea bargain agreement that [he or she]self approved,subject to him assessing a lesser punishment.".)

In petitioner's case ,defense counsel erred by stating that, "petitioner changed his mind",because petitioner never did,there is no evidence of such mind changing,as the record doesnot suported it.

Petitioner is not an attorney,nor he is trying to become one however, he does read and write several different languages,and he's a duly educated low-paying mechanical engineer,that in his readings of law found the following very interested.

THE JUDGE MADE ME DO IT: EVALUATING HOW JUDICIAL EXPRESSION IN PLEA NEGOTIATIONS MAY CONTRIBUTE TO WRONGFUL CONVICTIONS
54 Willamette L.Rev.137(2017)

[*152]While there are many favorable aspects to having judges participate in plea negotiations between the goverment,defense counsel,and the defendant,there is also the grave possibility that the process could be abused by an incompetent defense counsel,an overly aggressive prosecutor,or a biased judge.For example,in LAFLER v.COOPER,the Supreme Court considered the federal habeas corpus[*153]corpus petition of Cooper,alleging that his trial counsel was ineffective in light of Strickland v.Washington. Specifically,he argued that the prosecutor presented him with a plea bargain under which he would plead to two of the four felony offenses listed in the indictment in exchanged for a sentence in the range of fifty-one to eighty-five months of imprisonment.After disccussing the specific details of the agreement with his trial counsel,the Lafler defendant chose to reject the plea bargain on the advice of counsel,and to proceed to a jury trial. The jury convicted the defendant on all four counts and he received a sentence that was at least 100 months more than the sentence originally proposed by the prosecutor[.] [*158].Accordingly,defense counsel and the prosecution need to place the plea agreement under the constitutional microscope so that [t]he proposed sentence is [fair],reasonable,and appropriate for the defendant before the bar."It is expected that the trial courts (whether State or Federal)would generally honor the agreement

reached between...the defendant and the...prosecution.These agreements,according to a majority of[*159]defense attorneys consulted by this author,are seen as sacrosanct to the efficiency of the criminal justice system and are [non]"retractable" to the criminal defendant-whose life hangs in the balance.

Therefore it is clear that the following are without question facts;

(A).Petitioner exchanged a guilty plea,and confession for ten years,although the trial judge approved and accepted the document without any specifications.
(B).The Honorable Judge did not follow the specifications of the State Law Code of Criminal Procedure 26.13(a)(2).
(C).The Judge committed an error during sentencing when sentence carry the maximum of 10 years.
(D).Defense Counsel was [i]ncompetent,and ineffective.;and
(E).The document(plea bargain agreement)was tamper with,when someone placed an " X "over the plea-agreement.

TEXAS JURISPRUDENCE 3D Ed.2024

("For a fraudulent misrepresentation claim,a party must plead and prove that;
(1)a material representation was made(the " X "over the document);
(2)that was false;
(3)that was made knowingly or with reckless disregard for its truth or falsity,(4)that was made with the intention that it be acted upon by the party,(5)it was in fact relied upon by the other party,and (6)demaged the other party.")

In petitioner's plea bargain agreement document,there is no initials as to who "cross-out" the document,so he cannot said who did it,nevertheless, it is proof that the elements of fraud are present,and that petitioner suffer unrepairable injury. Petitioner,also points out that the cross-over is a crime under Texas Penal Code.Sec.37.10Tampering with Governmental Record..
("A person commits an offense if he or she:(1)knowingly makes a false entry,or false alterartion of,a governmental record.")

Petitioner can proved with the help of the trial reporters record that there was no other plea hearing,other than the one that took place on April 9,2012;that the plea bargain is for 10 years,according with the plea-documents,and reporters record on Volume one page 16,and that defense counsel was incorrect ,ineffective,and incompetent from beggining to end,and that because of counsel's failures petitioner still incarcerated.

These are petitioner's "GROUNDS FOR GRANTING PETITION."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 3rd Day of April ,2024