No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GABRIEL PAUL HALL,
Petitioner,

v.

TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the
272nd District Court of Brazos County, Texas

CORRECTED PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE

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Capital Case

Question Presented

When a state has a rule that an attorney must be given an opportunity to explain his conduct before being found to have rendered ineffective assistance at trial, does a state statute which makes the attorney ineligible for future capital appointments if he is found to be ineffective create a pecuniary incentive for the attorney to be less than fully honest in explaining her- or himself and thereby violate a habeas applicant's Fourteenth Amendment right to due process or Sixth Amendment right to the effective assistance of counsel?

List of Parties and Corporate Disclosure Statement

All parties to the proceeding in the state court are listed in the caption.

Petitioner is not a corporate entity.

List of All Directly Related Proceedings in State Court

Trial:

State v. Hall, No. 11-06185-CRF-272 (272nd Dist. Ct., Brazos, County, Tex. Oct. 7, 2015).

Direct appeal:

Hall v. State, 663 S.W.3d 15 (Tex. Crim. App. Dec. 8, 2021).

State habeas proceedings:

Ex parte Hall, No. WR-86,568-01, 2024 WL 467871 (Tex. Crim. App. Feb. 7, 2024).

In re Hall, No. WR-86,568-02, 2023 WL 8798032 (Tex. Crim. App. Dec. 20, 2023).

Hall v. State, No. AP-77,121, 2024 WL 1295782 (Tex. Crim. App. Mar. 27, 2024).

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Introduction

Pursuant to Texas law, most claims of ineffective assistance of trial counsel are not cognizable on direct appeal. *Rylander v. State*, 101 S.W.3d 107, 110-11 (Tex. Crim. App. 2003). This is because trial counsel must ordinarily be given an opportunity to explain his complained of actions or inactions during a habeas proceeding before he can be found to have rendered ineffective assistance. *Id.* In this respect, Texas is far from unique: Counsel believe at least fourteen other states have a similar rule.[1]

[1] *See Broadnax v. State*, 130 So. 3d 1232, 1255-56 (Ala. Crim. App. 2013); *Barry v. State*, 675 P.2d 1292, 1295 (Alaska Ct. App. 1984); *People v. Lewis*, 786 P.2d 892, 907 (Cal. 1990); *People v. Thomas*, 867 P.2d 880, 886 (Colo. 1994); *State v.*

However, Texas law does appear to be unique with respect to the consequences of having been found to be ineffective: if an attorney is found to have rendered ineffective assistance at a capital trial, he becomes presumptively ineligible to be appointed to represent indigent capital defendants again.[2] Because of this unique provision in Texas law, if the attorney desires to continue representing defendants facing death, he has both a professional and pecuniary interest in not being found to have rendered ineffective assistance. Consequently, and inevitably, at an evidentiary hearing convened to ascertain whether his former client is entitled to relief because the attorney violated the Sixth Amendment right to the effective assistance of counsel, the attorney's interests are in irreconcilable conflict with those of his former client. This consequence results entirely from a feature of Texas law not present in the laws of other death penalty states.

Lead trial counsel at Petitioner's 2015 capital murder trial was demonstrably inefffective. Specifically, he failed to secure the presence of a critical expert witness

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Hinckley, 502 A.2d 388, 395 (Conn. 1985); *Briones v. State*, 848 P.2d 966, 976-77 (Haw. 1993); *State v. Lane*, 743 N.W.2d 178, 183 (Iowa 2007); *Pabst v. State*, 192 P.3d 630, 633 (Kan. 2008); *State v. Mitchell*, 894 So. 2d 1240, 1253 (La. Ct. App., 2d Cir. 2005); *Mosley v. State*, 836 A.2d 678, 685 (Md. 2003); *Commonwealth v. Peloquin*, 770 N.E.2d 440, 446 (Mass. 2002); *State v. Jett*, 474 N.W.2d 741, 743 (S.D. 1991); *Brown v. Commonwealth*, 380 S.E.2d 8, 9 (Va. Ct. App. 1989); *Tex S. v. Pszczolkowski*, 778 S.E.2d 694, 702–03 (W. Va. 2015).

[2] Texas law does provide that if a committee later determines that the finding of ineffectiveness no longer reflects the lawyer's ability, that lawyer can be reinstated to the list of attorneys eligible to receive appointments, but how the lawyer is to make this showing, given that he has not been able to represent indigent capital defendants in the interim, is unclear. *See* Tex. Code Crim. Proc. art. 26.052(d)(2)(C), (d)(3)(C).

at trial. The trial record makes clear that this was because of poor planning on the part of trial counsel and a mistaken belief that the expert's report could be admitted into evidence through the testimony of a different expert. Nevertheless, at the January 30, 2023, evidentiary hearing convened for the purpose of allowing trial counsel to explain his conduct at trial, trial counsel testified that he did not ever intend for the expert to testify at trial because he had previously decided the expert would not be a good witness. In other words, he gave evidence flatly at odds with the trial record but perfectly consistent with his desire to remain eligible for further appointments in capital trials. And the record establishes certainty as to the trial lawyer's intentions: During his testimony and in a subsequent conversation with the trial court at the bench (that the court reporter did not transcribe but which was overheard by habeas counsel), trial counsel explained that he was not then (i.e., in 2023) on the list of attorneys eligible for appointment to capital cases, but that he was actively seeking to be added to that list and hoped the presiding judge would keep him in mind for such appointments.

Even though the conversation at the bench was highly probative of trial counsel's credibility, the trial court found (and the CCA later affirmed) that the conversation should not be included in the state habeas record. Soon after the 2023 evidentiary hearing, undersigned Counsel filed a motion in the trial court asking that court to find that, during the evidentiary hearing, Petitioner's due process rights were violated by Article 26.052 because the statute created an incentive for trial counsel to be less than forthcoming. On January 10, 2024, the trial court

issued an order denying Petitioner's motion. The CCA declined to address the motion (or the trial court's order denying relief on the motion) in its February 7, 2024, Order denying Petitioner habeas relief. Believing the CCA should address the trial court's January 10 order, trial counsel filed a notice of appeal on February 8, specifically asking the CCA to review the trial court's January 10 order. In a March 27, 2024, Opinion, the CCA found it did not have jurisdiction to review the order in the proceeding generated by the notice of appeal. As a result, the last state court to have addressed the merits of the issue, and, according to the CCA, the last state court to have the authority to address the merits of the issue, was the trial court.

Counsel respectfully request the Court grant certiorari to address the question of whether Article 26.052 violates a habeas applicant's right to due process by creating conflict between a trial attorney's personal interests and the habeas applicant's right to a conflict-free proceeding to determine whether his Sixth Amendment right to counsel was violated at trial.

Opinions and Orders Below

The Memorandum Ruling and Order of the 272nd Judicial District Court denying Petitioner relief on his motion to find his right to due process was violated in his state habeas proceeding by Article 26.052 of the Texas Code of Criminal Procedure was issued on January 10, 2024. This Order was not published and is attached as Appendix A.

The Texas Court of Criminal Appeals ("CCA") issued its Order denying Petitioner relief in his state habeas proceeding on February 7, 2024. The Order was not published and is attached as Appendix B.

Because the CCA's February 7 Order did not address the trial court's January 10 Order, on February 8, 2024, Petitioner gave notice that he was appealing the trial court's January 10 Order. On March 27, 2024, the CCA issued its Opinion finding that the January 10 Order did not constitute an appealable order and, for that reason, dismissing the appeal for want of jurisdiction. The Opinion was not published and is attached as Appendix C.

Statement of Jurisdiction

In connection with his state habeas proceeding, Gabriel Hall filed a motion in the trial court seeking a declaration that Article 26.052 of the Texas Code of Criminal Procedure unconstitutionally interfered with Hall's Fourteenth Amendment right of due process to receive a full and fair hearing on his claim that he had received ineffective assistance of counsel at his capital murder trial. On January 10, 2024, the trial court denied the motion on the merits.

Out of an abundance of caution, and in view of the possibility Hall was required to appeal this denial to the CCA, on February 8, 2024, Hall filed a notice of appeal in the trial court informing that court it intended to appeal the January 10 decision to the CCA. On March 27, 2024, the CCA dismissed the appeal, noting that the trial court's January 10 order was not an appealable order under state law.

Consequently, because the trial court's judgment "is not reviewable by any state court," the January 10, 2024, decision of the trial court on the merits of Hall's Due Process challenge to Article 26.052 of the Texas Code of Criminal Procedure was a decision by "the highest state court in which a decision may be had," and this Court accordingly has certiorari jurisdiction to review the decision of the trial court. *Spralding v. Texas*, 455 U.S. 971, 974-75 (1982) (Brennan, J., dissenting from denial of certiorari); *Mich.-Wis. Pipe Line Co. v. Calbert*, 347 U.S. 157, 159-60 (1954); *Grovey v. Townsend*, 295 U.S. 45, 46-47 (1935).

Constitutional Provisions Involved

The Fifth Amendment to the United States Constitution provides, in pertinent part: "nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution provides: "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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "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." U.S. Const. amend. XIV, § 1.

Statement of the Case

A. Trial

On September 11, 2015, Petitioner Gabriel Paul Hall was convicted of killing Edwin Shaar during the course of an aggravated robbery. 81 R.R. 50.[3] During the punishment phase of the trial, Hall's attorneys presented voluminous testimony about Hall's mental illness, developmental delays, and organic brain damage. A variety of experts testified that these impairments diminished his capacity to regulate his own emotions and his ability to function in the world. For example, Neuropsychologist Nancy Nussbaum testified Hall had subtle organic brain dysfunction. 91 R.R. 130. Dr. Jolie Brams explained the effects of developmental trauma and generational deprivation on Hall's emotional development. 93 R.R. 25-27. Pyschologist Bethany Brand testified that Hall suffered from severe mental illness. 94 R.R. 12.

Trial counsel had intended for Dr. Richard Adler to be its final expert witness at trial. Defense counsel intended for Dr. Adler to testify about the findings of other experts and then form his own conclusions based on that data. 86 R.R. 105-08. Among the experts whose conclusions Dr. Adler intended to report during his testimony was Dr. Ruben Gur. 86 R.R. 107. Gur's work in the case involved brain

[3] Citations to the Reporter's Record of Petitioner's 2015 capital murder trial appear herein as [volume number] R.R. [page number(s)].

imaging and opinions regarding what those images might mean with respect to Hall's culpability. While the State recognized Adler could rely on images Gur obtained and even on Gur's report, the State objected to Adler's testifying about Gur's conclusions and trial counsel's attempting to introduce Gur's report through Adler. 86 R.R. 109; 89 R.R. 9; 97 R.R. 91.

Upon realizing that Dr. Gur's opinions would not be admissible through Dr. Adler, trial counsel appears to have finally begun working to secure Dr. Gur's presence at trial. Specifically, on September 28, 2015, trial counsel informed the trial court that while the defense did not initially intend to have Dr. Gur testify, it now realized he would have to testify so as not to risk portions of Dr. Adler's planned testimony being inadmissible. 93 R.R. 9. Trial counsel informed the court that Gur would not be able to appear in person but would be available to testify by Polycom. 93 R.R. 9. The State agreed that it would not object to Gur's being allowed to testify by Polycom. 93 R.R. 9. The State also made clear it would object to Adler's testifying about Gur's conclusions if Gur did not first testify to those opinions. *Id.* at 9-10. Two days later, on Wednesday, September 30, 2015, trial counsel informed the court that Gur would be able to appear by Polycom on Friday, October 2. 95 R.R. 6. The State made clear that unless Gur testified, it would object to any attempt to admit his report as substantive evidence through Adler's testimony. 95 R.R. 7. The following day (i.e., Thursday, October 1, 2015), co-counsel informed the court that Gur would, in fact, not be available as promised on Friday, October 2, 2015, but could instead appear (by Polycom) on Monday, October 5, 2015. 96 R.R. 217-25.

While the record does not reflect what transpired between the time the court adjourned on Thursday, October 1, and reconvened on Friday, October 2, it appears that during that time, trial counsel, without consulting other members of the defense team, abandoned any attempt to secure Gur's testimony and place it before the jury. On Friday, October 2, Adler testified. Realizing that any hearsay objection from the State to the admissibility of Gur's report through Adler would likely be sustained, trial counsel made no attempt to have Gur's report admitted as substantive evidence, though that had purportedly been of critical importance to the defense team only the day before. The jury did not get to hear Gur testify about the conclusions he drew from his imaging. In a word, the jury did not hear from Dr. Gur because trial counsel was unprepared and did not do the minimum his job required.

On October 7, 2015, the jury unanimously answered "yes" to the first special issue, which asked whether, beyond a reasonable doubt, there was a probability that Hall would commit criminal acts of violence that would constitute a continuing threat to society. 100 R.R. 132; Tex. Code Crim. Proc. art. 37.071, § 2(b)(1). The jury unanimously answered "no" to the second special issue, which asked whether there were sufficient mitigating circumstances to warrant a sentence of life imprisonment without the possibility of parole. 100 R.R. 132; Tex. Code Crim. Proc. art. 37.071, § 2(e)(1). The trial court subsequently sentenced Hall to death. 100 R.R. 134.

B. State habeas proceedings

Undersigned Counsel filed Hall's Application for Postconviction Writ of Habeas Corpus in the state habeas trial court on October 17, 2019. WR-86,568-01

C.R. at 1.[4] The Sixth claim raised in the Application alleged that Hall received ineffective assistance during the punishment phase of trial primarily because trial counsel failed to secure Dr. Gur's testimony at trial. *Id.* at 73-80. On December 29, 2022, the trial court scheduled an evidentiary hearing for January 30, 2023, to "resolve any factual issued raised by" Hall's ineffective assistance of counsel claim. *Id.* at 307.

At Hall's trial, trial counsel repeatedly assured the court he was working diligently to arrange for Dr. Gur to be present in the courtroom and give live testimony. In contrast, at the evidentiary hearing held in the habeas proceeding, the same trial counsel testified that he had been leery of having Dr. Gur testify at trial because of a 2011 opinion from the U.S. Court of Appeals for the Eighth Circuit in which Dr. Gur's work was criticized. E.H.R.R. at 10-12.[5] This story was, of course, irreconcilably different from what trial counsel assured the court at trial, which was that he was trying diligently to secure Gur's presence at trial. At the habeas proceeding, trial counsel offered a reason for not having Gur testify that sounded as if it was a decision grounded in a strategic choice (namely, that he was worried about Dr. Gur's testimony). However, in view of how trial counsel had said precisely the opposite during the capital murder trial, the likely explanation for trial counsel's flip-flop was also revealed during cross examination, when he stated he

[4] Citations to the main volume of the state habeas clerk's record in Hall's initial state habeas proceeding appear herein as "WR-86,568-01 C.R. at [page number(s)]."

[5] Citations to the single volume Reporter's Record from the January 30, 2023, evidentiary hearing appear herein as "E.H.R.R. at [page number(s)]."

wanted to be added to the list of attorneys who can represent death-sentenced Texas defendant in their direct appeal proceeding. E.H.R.R. at 71 ("I'm thinking about getting back on the list strictly to do appeals, if I can do that."). If there were any doubt about trial counsel's financial interest, it was resolved during a *sotto voce* colloquy counsel had with the judge presiding over the habeas proceeding: As trial counsel left the stand, he stopped at the bench to talk to the trial court and reiterated his desire to continue representing indigent capital defendants by asking the trial court to keep him in mind if the court needed to appoint someone to a capital direct appeal. 3 Supp. R.R. at 13[6]; *see also* WR-86,568-01 C.R. at 588-89 (identifying the speakers in the conversation as being the judge and trial counsel).

When undersigned Counsel received a copy of the January 30 evidentiary hearing record, they noticed trial counsel's conversation at the bench was not included in the record and filed a motion to correct the record. Counsel believed (and still believe) that trial counsel's statement to the court about keeping him in mind further revealed trial counsel's interest in not being found ineffective and, for that reason, is something the state habeas court should have taken into account in determining the merits of Hall's claim. The trial court, however, refused to consider this conversation when considering the merits of Hall's claim, finding the conversation "was not relevant to any issue in this case." WR-86,568-01 C.R. at 590. The trial court faulted undersigned Counsel for not anticipating the conversation at

[6] Citations to the four-volume transcript of a hearing convened in the trial court on April 25, 2023, appear herein as "[volume number] Supp. R.R. at [page number(s)]."

the bench would be omitted from the transcript and subsequently asking permission to question trial counsel about the conversation during the January 30 hearing. *Id.* at 595. In its opinion denying Hall relief on the claims raised in his habeas application, the CCA agreed with the trial court that trial counsel's "remarks at issue should not be made part of the official record of the January 30, 2023[,] evidentiary hearing." Appendix B at 4.

On March 15, 2023, undersigned Counsel filed a Motion to Find Applicant's Right to Due Process in this Proceeding was Violated due to Article 26.052 of the Texas Code of Criminal Procedure. WR-86,568-01 C.R. at 457.[7] Though the Motion did not challenge the constitutionality of Hall's conviction or death sentence but instead alleged his right to due process was violated during the habeas proceeding, the trial court initially found the Motion constituted an impermissible successive habeas application and recommended it be dismissed. WR-86,568-01 C.R. at 595.

In response, undersigned Counsel filed a Petition for Writ of Mandamus in the CCA asking that court to order the trial court to issue a ruling on the merits of Hall's Motion. On December 20, 2023, the CCA ordered the trial court to rule on the merits of the Motion. *In re Hall*, No. WR-86,568-02 (Tex. Crim. App. Dec. 20, 2023). On January 10, 2024, the trial court issued its Memorandum Order and Ruling. Appendix A. The order does not give its reasoning, but simply states the trial court

[7] The March 27, 2024, opinion from the CCA states Counsel filed this Motion in the direct appeal proceeding instead of the habeas proceeding. Appendix C at 1. Both the style of the Motion and its inclusion in the state habeas clerk's record make clear the Motion was filed in the habeas proceeding. *See* WR-86,568-01 C.R. at 457.

did not believe the statute was unconstitutional and that, if it had been unconstitutional before 2011, the amendment made in that year, which provided that a committee could subsequently rescind the penalty if it believed the conduct which led to the attorney having been found ineffective no longer represented his ability, cured the problem. *Id.* Of course, even if an attorney might be added back to the list of attorneys eligible for capital appointments at a later date, that does not change the import of Hall's motion, which was the attorney's professional and pecuniary interests are in conflict with his former client's at any evidentiary hearing convened to ascertain whether the attorney was ineffective.

Though the trial court's Memorandum Ruling and Order was issued almost a month before the CCA issued its February 7, 2024, Order denying Hall habeas relief, the CCA's opinion made no mention of Hall's motion or the trial court's order denying it. *See* Exhibit B. Accordingly, on February 8, Counsel gave notice to the trial court that they intended to appeal the trial court's January 10 order to the CCA. This notice of appeal generated a new cause number, and, on March 27, the CCA issued an opinion finding it was without jurisdiction to consider Hall's Motion in the newly generated cause number.[8]

[8] Other than suggesting it believed the Motion was incorrectly filed, the CCA gave no explanation for its failure to address the Motion (which was filed in the habeas proceeding) in its February 7 order.

Reasons for Granting the Writ

I. Due process requires a habeas applicant be given a fair opportunity to raise claims that his Sixth Amendment right to the effective assistance of counsel at trial was violated.

This Court has repeatedly recognized that a criminal defendant has a fundamental right to the effective assistance of counsel. *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984) (holding counsel's performance may be so defective that the defendant's Sixth Amendment right was violated). As the Court recognized in *Martinez v. Ryan*, 566 U.S. 1 (2012), "[t]he right to the effective assistance of counsel at trial is a bedrock principle in our justice system." *Martinez*, 566 U.S. at 12. Because of that, state procedures which have the effect of impeding a habeas petitioner's ability to press an ineffective assistance of trial counsel claim are particularly troubling. *Id.* at 12-13.

As this Court recognized in *Trevino v. Thaler*, 569 U.S. 413 (2013), Texas law makes it virtually impossible for a death-sentenced inmate to raise a claim of ineffective assistance of trial counsel on direct appeal. *Trevino*, 569 U.S. at 417. This is primarily because, under Texas law, trial counsel must be given the opportunity to explain his conduct before being found to have rendered ineffective assistance. *Rylander v. State*, 101 S.W.3d 107, 111 (Tex. Crim. App. 2003). Trial counsel is afforded that opportunity in a hearing, such as the one convened on January 30, 2023, in this case. Accordingly, the state habeas proceeding was the first one in which Hall was able to raise his ineffective assistance of trial counsel claim.

II. Because of article 26.052, the professional, pecuniary, and reputational interests of Texas attorneys alleged to have rendered ineffective assistance in a capital trial are adverse to those of their former clients when those former clients subsequently raise a claim of ineffective assistance of counsel.

Pursuant to Texas Code of Criminal Procedure article 26.502, an attorney who has previously been found to be ineffective is not eligible to be appointed to represent death-sentenced inmates on appeal unless a local selection committee makes a special finding that the conduct which led to his being found ineffective "no longer accurately reflects the attorney's abilit[ies]." Tex. Code Crim. Proc. § 26.502(d)(3)(C). Because of this, the interests of an attorney who is alleged to have rendered ineffective assistance at trial and who intends to continue representing death-sentenced inmates on appeal, are adverse to those of his former client at any hearing convened, in part, for the purpose of allowing him to explain his actions. Namely, counsel has a professional interest in being less than forthcoming at any hearing in which he is called to explain his actions at trial, because that testimony could result in his subsequently being unable to represent other death-sentenced defendants.

The federal courts, including this Court, have recognized that death-sentenced habeas petitioners have a right to conflict-free counsel in federal habeas proceedings. *See Clark v. Davis*, 850 F.3d 770, 779 (5th Cir. 2017); *Juniper v. Davis*, 737 F.3d 288, 290 (4th Cir. 2013); *see also Christeson v. Roper*, 574 U.S. 373, 379 (2015) (finding that when a capital defendant is represented by conflicted counsel, he is, in effect, completely without counsel). The federal courts have recognized that when an attorney representing a capital defendant is put in a position where his

professional interests prevent him from raising a meritorious claim of ineffective assistance of counsel, his client's statutory right to conflict-free counsel is violated. *See Clark v. Davis*, 850 F.3d at 779.

While the situation presented in Hall's case is different from the one addressed by the federal courts in the opinions cited above (because undersigned Counsel are not conflicted), it is nonetheless analogous. State law has created a conflict which has now impeded Hall's one opportunity to pursue his ineffective assistance of counsel claim in the state courts. Article 26.052 establishes an incentive for a lawyer to rationalize his past conduct or otherwise fail to honestly acknowledge mistakes, errors, or shortcoming.

III. At the January 30, 2023, evidentiary hearing convened in this case, it became apparent that trial counsel's interests were adverse to Hall's. That conflict led to trial counsel's being less than forthcoming about his failure to secure expert testimony at trial.

At the evidentiary hearing convened on January 30, 2023, to resolve controverted factual pertaining to Hall's ineffective assistance of counsel claim, his lead trial attorney explained that while he was not, at that time, on the list of attorneys eligible to represent clients in capital cases, he was "thinking about getting back on the list strictly to do appeals." E.H.R.R. at 71. On his way off the witness stand, trial counsel asked the trial court to keep him in mind if he needed to appoint an attorney to a capital appeal. 3 Supp. R.R. at 13. During the hearing, trial counsel's interests were aligned with those of the State, as both trial counsel and the State sought to prevent the state habeas court from finding that trial counsel was ineffective at trial. The State elicited testimony from trial counsel on cross

examination that was designed to bolster his credentials by highlighting counsel's experience on capital cases. E.H.R.R. at 69-73.

On direct examination, lead trial counsel testified that not having Dr. Gur testify was a strategic choice, while co-counsel testified it was simply a product of disorganization and poor planning. E.H.R.R. at 53, 64-65, 73, 77-78, 83-89.

Trial counsel's testimony at the January 30, 2023, was not credible, especially in light of explanations he gave to the Court during Hall's trial about his intent to have Dr. Gur testify. Given the degree to which his testimony differed both from that of other members of his team and his own explanations about why Dr. Gur was not available during the trial, it is clear that trial counsel was less than forthcoming about why Dr. Gur did not testify (and his report was not subsequently admitted as substantive evidence) at Hall's 2015 trial. Article 26.052 combined with trial counsel's desire to continue representing death-sentenced Texas inmates in their direct appeal proceedings created an incentive for trial counsel to testify this way. By doing so, article 26.052 impeded Hall's ability to have his claim fairly considered by the state habeas court.

Conclusion and Prayer for Relief

Petitioner requests this Court grant certiorari and schedule the case for briefing and oral argument and subsequently find that Article 26.052 of the Texas Code of Criminal Procedure is unconstitutional because it interferes with a habeas applicant's due process right of having his Sixth Amendment claim adjudicate in a proceeding not adversely affected by his trial attorney's conflicting interests.

DATE: April 15, 2024

Respectfully submitted,

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