**No. 23-7322**

IN THE
# Supreme Court of the United States

GABRIEL PAUL HALL,
*Petitioner*,
v.

STATE OF TEXAS
*Respondent*.

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

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## CAPITAL CASE

## QUESTION PRESENTED

When a state has an appointment statute in place for eighteen years to ensure qualified capital case representation, can a petitioner flout state procedural rules by filing a motion to challenge the statute not only after trial and direct appeal but late into state collateral proceedings and appeal the trial court's denial of that motion to this Court?

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## BRIEF IN OPPPOSITION

This is a federal habeas corpus proceeding brought by Petitioner, Gabriel Paul Hall, a death-sentenced Texas inmate. Hall was properly convicted and sentenced to death for the 2011 murder of Edwin Shaar, Jr. in the course of committing or attempting to commit burglary. Hall now seeks a writ of certiorari from the trial court's order denying a due process challenge to Texas Code of Criminal Procedure Article 26.052. Pet. Appx. A. When Hall appealed the trial court's order to Texas' highest criminal court, the Court of Criminal Appeals, the court found it lacked jurisdiction and found the trial court's order was not "appealable." Pet. Appx. C at 2. Hall fails to demonstrate he has properly invoked this Court's jurisdiction. Hall also fails to demonstrate a compelling, meritorious issue for this Court's review or that this case is a proper vehicle.

## STATEMENT OF THE CASE

### I. Facts of the Crime

The CCA summarized the facts of the crime as follows:

> On October 20, 2011, eighteen-year-old [Hall] entered the garage of sixty-eight-year-old Edwin Shaar, Jr. ("Ed") and murdered him in a manner that even [Hall] describes in his brief as "extended, violent, and bloody." [Hall] stabbed Ed multiple times, inflicting deep wounds to his face, neck, and upper back. Ed, who suffered from Parkinson's Disease, struggled to defend himself, sustaining additional scrapes and bruises all over his body. Eventually, [Hall] shot Ed point blank in the forehead, killing him. After he shot Ed, [Hall] entered Ed's house and tried to shoot Ed's wheelchair-bound wife, Linda—but the gun jammed. So, as Linda frantically begged a 9-1-1 operator for help, [Hall] moved behind Linda's wheelchair and slashed her throat. Afterwards, [Hall] left the house without taking anything.

Police officers responding to Linda's 9-1-1 call found her inside the house, covered in blood, and struggling to breathe. On her way to the hospital, Linda was able to describe her assailant as a "Hispanic or Asian" male dressed in camouflage and wearing a hat. Ultimately, Linda survived the attack.

The police provided Linda's description of her assailant to the news media, hoping that someone might come forward with useful information. Within hours, a local gardener told the police that [Hall], a Filipino high-school student whom he had previously seen in the Shaars' neighborhood, fit the description that Linda had given. A classmate of [Hall's] informed the police that, around the time of the offense, he had seen [Hall] wearing a camouflage-style hat in a park near the Shaars' house. The classmate did not know [Hall]'s name, but he was able to identify [Hall] in their school's yearbook.

The police learned that [Hall] was the adopted son of Wesley ("Wes") and Karen Hall. In the early morning hours of October 21, 2011, the police went to the Hall residence, just five blocks from the crime scene, to speak with [Hall]. When the police arrived and asked to speak with [Hall], [Hall's] sister answered the door and told them that her parents were not home, but she was able to reach Wes, a local attorney, on his cellular phone. With Wes listening on speakerphone and [Hall] standing just outside the house, a police detective asked [Hall] where he had been at the time of the crime. [Hall] replied that he had been "in the park jogging." The detective asked to see the clothes that [Hall] wore while jogging. [Hall] produced some freshly washed clothes that did not match the witnesses' description of the assailant's clothing. The police left without arresting [Hall].

Later that day, Wes and Karen brought [Hall] to the police station so that [Hall] could give a voluntary statement. [Hall] agreed to let the police collect his fingerprints. However, police discovered that [Hall] had a superglue-like film on his fingertips, preventing them from collecting useful fingerprints. [Hall] attributed the film to "a skin condition," but the film came off when an officer wiped [Hall]'s fingertips with alcohol, and police were able to obtain his fingerprints.

[Hall] began speaking with homicide detectives about Ed's murder; Wes asked the detectives to read [Hall] his *Miranda* rights.

*See Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966). While Wes was still in the interview room, [Hall] denied murdering Ed or attacking Linda. Eventually, one of the detectives asked [Hall] if he would feel more comfortable speaking with them if Wes stepped out of the room. [Hall] said that he would. Wes agreed to step out.

[Hall] then admitted that he was the person who had murdered Ed and assaulted Linda. The Shaars were strangers to [Hall]—he attacked them simply because he "want[ed] to kill," and the Shaars presented "a suitable target." [Hall] told the detectives that he had "enjoyed" killing Ed, at one point claiming to have had a "little smile on [his] face" as he did so. [Hall] said that he "did not feel any emotion" when he shot Ed in the head and that Linda's pleas for [Hall] to spare her life "did not concern" him. At various points, [Hall] claimed to have planned the attack for anywhere from six months to a year and a half. One of the detectives testified that, during this confession, [Hall] appeared "happy" to describe what he had done.

[Hall] told the detectives that he put the murder weapons and clothes he wore that day into a bag and threw the bag into a pond near the Shaars' house. Investigators were unable to find the bag after draining and searching the pond. [Hall] eventually admitted that he had hidden the weapons and clothing in the garage attic of another house the Halls owned. When the police searched the attic, they found what one police witness would later describe as a "go bag"—a bag containing "[e]verything you might need for a rapid response to some sort of violent situation." Among other things, this bag contained: (1) a handgun later linked by forensic testing to ballistic evidence recovered at the crime scene; (2) two knives later shown by DNA testing to have Ed's and Linda's DNA profiles on them; (3) jeans and a long-sleeved shirt, both stained with what was later confirmed to be Ed's blood; and (4) a camouflage-style "jungle hat" later shown to have Ed's DNA on the outside and [Hall]'s DNA on the sweatband. There was also evidence of a homemade bomb in [Hall]'s "go bag."

*Hall v. State*, 663 S.W.3d 15, 22-23 (Tex. Crim. App. Dec. 8, 2021).

## II. Direct Appeal and Postconviction Proceedings

Hall was convicted of capital murder for killing Edwin Shaar, Junior. *Hall v. State*, No. AP-77,062 slip op. (Tex. Crim. App. Oct. 3, 2012). Hall appealed to

the Texas Court of Criminal Appeals (CCA) which affirmed his conviction. *Id*. This Court denied Hall's petition for a writ of certiorari off direct appeal. *Hall v. Texas*, 143 S. Ct. 581 (2023). Hall filed a state habeas petition which the CCA denied. *Ex parte Hall*, No. WR-86,568-01 (Tex. Crim. App., Feb. 7, 2024). During state writ proceedings Hall 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. Pet. at 12 (citing WR-86,568-01 CR at 457.). The trial court denied Hall's motion finding the statute to be constitutional. Pet. Appx. A. Hall attempted to appeal the denial to the CCA but the court dismissed for lack of jurisdiction finding that Hall had failed to demonstrate the ruling was from an "appealable order" under Texas Code of Criminal Procedure Article 44.02. Pet. Appx. C at 2. Hall presently petitions this Court to review the denial order the State's highest court deemed unappealable.

Hall has also filed a certiorari petition challenging the CCA's denial of state habeas relief which includes a related ground for relief. *Hall v. Texas*, No. 23,7448. Hall has not yet petitioned the district court for federal habeas relief.

## JURISDICTION

As explained below, the Court lacks jurisdiction to review Hall's petition under 28 U.S.C. § 1257(a).

## REASONS FOR DENYING CERTIORARI REVIEW

The Rules of the Supreme Court provide that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for

"compelling reasons." Sup. Ct. R. 10. In the instant case, Hall fails to advance a compelling reason for this Court to review his case and, indeed, none exists. First, Hall fails to demonstrate this Court has jurisdiction to review a matter raised and rejected only before the trial court during state habeas review. And Hall fails to identify a federal question. Even assuming Hall has properly presented a due process claim based on a Texas statute, he fails to demonstrate this case is a proper vehicle for consideration of that question. Finally, Hall's claim lacks merit.

## I. This Court Lacks Jurisdiction to Consider Hall's Constitutional Claims Because Hall Does Not Appeal from the State's Highest Court and Because Hall Fails to Demonstrate a Federal Question.

The Court lacks jurisdiction to review Hall's petition under 28 U.S.C. § 1257(a). The statute states:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

*Id*. The federal courts have long recognized that in criminal matters the CCA is Texas's highest court. *Gonzalez v. Thaler*, 565 U.S. 134, 138, 132 S. Ct. 641, 646 (2012); *Richardson v. Procunier*, 762 F.2d 429, 431 (5th Cir. 1985). Hall makes clear he is not appealing from the CCA's order dismissing the appeal for lack of jurisdiction but rather from the trial court's order denying his motion. Pet. Appx. C; Pet. at 5-6.

Hall contends that "[o]ut of an abundance of caution" he appealed the trial court's order to the CCA. Pet. at 5. But he contends that when the CCA dismissed the appeal holding that the trial court's "order was not an appealable order under state law," the trial court's judgment became a decision "by 'the highest state court in which a decision may be had.'" Pet. at 6. In support of this assertion, Hall cites to three of this Court's past decisions. But all are distinguishable here.

First, Hall cites to *Spradling v. Texas*, 455 U.S. 971, 974-75 (1982) (Brennan, J. dissenting from the denial of certiorari). The *Spradling* case involved a pretrial appeal from the denial of a double jeopardy motion and yet was not granted by this Court. Second, he puts forth *Mich.-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954), a civil case where the Texas Supreme Court denied review but did not dismiss for lack of jurisdiction. In that case the highest state court had the opportunity to rule on the issue. Finally, Hall cites to *Grovey v. Townsend*, 295 U.S. 45, 46-47 (1935), an overruled case in which this Court held that the petitioner who was denied his right to vote in the Democratic primary by the county clerk refusing him a ballot was not entitled to relief because: "We find no ground for holding that the respondent has in obedience to the mandate of the law of Texas discriminated against the petitioner or denied him any right guaranteed by the Fourteenth and Fifteenth Amendments." *Id.* at 55.

None of these cases demonstrate that Hall is entitled to appeal an "unappealable order" to this Court. Nor has Hall demonstrated that he raised his

claim in a procedurally correct manner such that it could be appealed. To the extent Hall believes the statute is unconstitutional on its face, he failed to raise this issue at trial, on appeal, or as a claim for state habeas relief. Hall has no precedent that merely moving a state trial-level court to declare a state statute unconstitutional is sufficient. Only one trial court in Texas has had the opportunity to consider the constitutionality of a state-wide law. This cannot comport with this Court's authority to review the final judgment of the state's highest court. Hall's petition should be dismissed for lack of jurisdiction.

Aside from Hall's failure to demonstrate a denial by the state's highest court, Hall also fails to demonstrate a federal question for this Court to resolve. Hall admits his motion in the habeas court "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." Pet. at 12. Thus, Hall is not raising a constitutional claim regarding due process concerns of a state statute but is complaining about the adequacy of state habeas proceedings. Yet, there is no constitutional right to such proceedings in the first instance. As Justice O'Connor has stated:

> A post-conviction proceeding is not part of the criminal process itself, but is instead a civil action designed to overturn a presumptively valid criminal judgment. Nothing in the Constitution requires the States to provide such proceedings . . . nor does it seem [] that that Constitution requires the States to follow any particular federal role model in these proceedings.

*Murray v. Giarratano*, 492 U.S. 1, 13 (1989) (O'Connor, J., concurring); *see also Pennsylvania v. Finley*, 481 U.S. 551, 557 (1989) (states have no obligation to provide collateral review of convictions). "State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal." *Giarratano*, 492 U.S. at 10. Indeed, this Court has explained that "[t]he additional safeguards imposed by the Eighth Amendment at the trial stage of a capital case are . . . sufficient to assure the reliability of the process by which the death penalty is imposed." *Id.*

And where a State allows for post-conviction proceedings, the Federal Constitution [does not] dictate[] the exact form such assistance must assume." *Finley*, 481 U.S. at 555, 557, 559; *cf. Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) ("federal habeas corpus relief does not lie for errors of state law") (internal quotation marks and citation omitted); *Henderson v. Cockrell*, 333 F.3d 592, 606 (5th Cir. 2003) (infirmities in state habeas proceedings do not state a claim for federal habeas relief). This Court has explained, "Federal courts may upset a State's postconviction procedures only if they are fundamentally inadequate to vindicate the substantive rights provided." *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009). The *Osborne* Court, further held, "the question is whether consideration of Osborne's claim within the framework of the State's procedures for postconviction relief 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as

fundamental,' or 'transgresses any recognized principle of fundamental fairness in operation.'" *Id.* (citing *Medina v. California*, 505 U.S. 437, 446, 448 (1992) (internal quotation marks omitted). Hall makes no attempt to argue that the statute offends some fundamental right.

Indeed, Hall's complaint highlights the process allowed him was more than adequate. Hall had notice and the opportunity to be heard. Represented by present counsel, Hall filed a habeas application with seven claims. *Ex parte Hall*, No. WR-86, 568-01, CR 1-105; see also Pet. Appx. B. Specifically, Hall raised a claim challenging trial counsel's performance. Hall was granted a hearing with the chance to cross-examine trial counsel in front of a live factfinder. Hall submitted findings of fact and conclusions of law, although his findings and conclusions were not ultimately adopted by the state habeas court. *Id.* at 390-456. The CCA, based on its own review, as well as the findings and conclusions of the trial court, denied relief in a reasoned opinion that specifically addressed the claims and relevant factual assertions in Hall's habeas application. Pet. Appx. B.

The Texas habeas system thus gave Hall the means and the opportunity to make claims, marshal evidence in support of his cause, and address the adverse evidence adduced against him. Hall fails to demonstrate the state habeas process was inadequate. He received all the all the due process he was to which he was entitled. Thus, Hall fails to state a federal question for this Court to resolve. Even if one ignores the admission that Hall seeks to attack the state habeas process

and takes his assertions that the state statute is unconstitutional at face value, Hall still fails to demonstrate a federal question.

This Court has long held that it "will not take up a question of federal law in a case 'if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment.'" *Cruz v. Arizona*, 598 U.S. 17, 143 S. Ct. 650, 658 (2023) (citing *Lee v. Kemna*, 534 U. S. 362, 375 (2002) (additional citation omitted). In this case, the CCA's dismissal indicates it found the order unappealable under state law. Pet. Appx. C. The Court has previously declined to review the federal questions "asserted to be present" when "'there is considerable uncertainty as to the precise grounds for the [state court's] decision.'" *Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70, 78 (2000) (per curiam) (quoting *Minnesota v. National Tea Co.*, 309 U.S. 551, 555 (1940)). But no such uncertainty exists in this case. Hall raised and presented a constitutional challenge to a state statute that affects neither his confinement nor sentence. He presented this challenge in a motion to the habeas court after the state evidentiary hearing not as a claim for relief in a properly filed habeas application. Unhappy with the denial, he improperly appealed the denial of the motion to the State's highest court which found his appeal failed to comport with state procedural law. Pet. Appx. C. This ruling is not inadequate, nor does it entangle federal law. As this Court has stated, "It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions." *Cardinale v. Louisiana*,

394 U.S. 437, 438 (1969). Hall's end run around state procedural rules would have this Court review every alleged due process violation denied by a trial court. This cannot stand.

This Court should deny Hall's petition based on a lack of jurisdiction.

## II. Hall's Claim Lacks Merit.

Hall asks this Court to resolve a challenge to the Texas statute setting qualification procedures for capital representation at trial. Pet. at 14-18. Hall's petition is unclear if he is raising a facial or as applied challenge. He asserts the combination of Texas procedures that require giving an attorney the opportunity to explain his conduct before a court may find the attorney ineffective with the penalty set out in the appointment statute that holds attorneys who have been held to be ineffective create a "pecuniary incentive" to commit perjury. Pet. at 15-16. Hall ignores that the statute in question has been operating since 2006 and was amended in 2011 to permit reinstatement of a lawyer's ability to accept appointments. Pet. Appx. A. As the trial court held, the amendment permitting reinstatement cures any alleged constitutional defect in the statute. *Id*. at 199 (internal page number). Hall fails to discuss why this reinstatement provision is insufficient to correct any alleged due process error in a facial challenge.

Hall also boldly asserts that Texas law creates an "actual conflict." Pet. at 15-16. But Hall's position is incorrect. Trial counsel's representation has clearly concluded; he is merely a witness to trial proceedings now. Texas statutes now

contemplate new counsel for both appeal and state habeas proceedings that may seek to raise ineffective assistance of counsel claims. Tex. Code Crim. Proc. Art. 26.052(j); Tex. Code Crim. Proc. Art. 11.071 § 2 (appointment procedure for state habeas). And trial counsel-as-witness is bound to testify truthfully in all the ways witnesses in general are so bound. He swore to do so upon taking the stand; he is subject to the penalty for perjury should he lie; and he is subject to cross-examination by Hall's new counsel. Further, trial-counsel-as-witness is also bound to testify truthfully by his oath and obligations as a member of the Bar and is subject to severe professional consequences that ordinary witnesses are not should he lie on the witness stand. Hall baselessly supposes that trial counsel might be unduly influenced by his speculative interest in future work as an appointed defense lawyer in capital cases. Thus, Hall utterly fails to show a conflict of interest that would undermine the extensive protections provide by law and professional obligation when lawyers testify.

Moreover, Hall fails to consider the consequences of his claim. Hall would have the Texas appointment statute declared unconstitutional because it seeks to remove counsel that have been held to be ineffective in other cases. The State and capital defendants have a legitimate interest in the appointment of qualified, knowledgeable, and experienced capital litigators. Hall's aspersions asserting that these professionals would perjure themselves is completely unsupported.

But even considering an as applied challenge, Hall also fails to demonstrate his constitutional rights were violated. Hall asserts rather than proves his trial

attorney was ineffective. This claim has not been substantiated by a ruling either from the habeas court or the CCA. He also alleges in his statement of facts that the habeas court refused to consider evidence of counsel's bias. Pet. at 11. But Hall's evidence of bias is not in the record. This is supported by the findings from the habeas court which Hall cites in his petition:

> 1. After John Wright, was excused as a witness in the January 30, 2023, hearing and the next witness was making his way to the witness stand, the court stated to him, "Safe travels, Mr. Wright." He paused at the bench and stated to the court, "Keep me in mind if you need a capital appeal.", to which the court responded, "You can, if you are on the list." Mr. Wright then stated "I'm trying to get back on (the list), but the requirements have gotten higher. I'm actually—I've gotten retained by people in Lubbock to write a bunch of appeals. I'm going to write the last one this month, which I think will qualify me to get back on the list." to which there was no response by the court. Mr. Wright then asked the court, "Your Honor, since I'm not going to testify, can I watch the proceedings for a little while or does the rule--" to which the court replied, "You are excused from the rule." The court then began to swear in the next witness. (RR-Vol. 1-pg 74, line 19 through pg 75, line 19), (RR-Vol 2, pg 29 through 32) and (RR-Vol. 3-pg 13, line 9 through pg 15, line 10).
>
> 2. In the context of the January 30, 2023 hearing record, the above exchange is reflected by the court reporter as "(Comments off the record)". (RR-Vol. 1-page 75, line 11).
>
> 3. Applicant's counsel, Jeffrey R. Newberry, saw Mr. Wright approach the bench after stepping down from the witness stand, and "heard Mr. Wright inform the Court that he was intending to seek to be added to the list of people who could be appointed to direct appeals in capital cases and that he would appreciate it that –if Judge Langley would keep him in mind if he had the need to appoint any such attorney in the near future." He heard no response from the court. (RR-Vol. 1- pages 30-31).
>
> 3. No timely objection was made to the exchange between the court and John Wright by either side and no request was made to reopen

> his testimony to allow for cross-examination of John Wright by either side. (RR-Vol. 1- pages 75 through 106) and (RR-Vol. 2-page 31, lines 12-15).
>
> 4. There is no evidence that applicant's counsel attempted to stipulate with opposing counsel and the trial court the substance of the exchange between the court and John Wright.
>
> 5. There is no evidence that applicant's counsel timely requested that the trial court reflect the substance of the unrecorded exchange between the court and John Wright.
>
> 6. Applicant's counsel did not question the accuracy of any other part of the reporter's record of the January 30, 2023 hearing.
>
> 7. The exchange described in FOF#1 above was not testimony subject to either examination by or cross-examination by either party in this case, was not relevant to any issue in this case, should not be a part of the reporter's record of that day, and was not required to reported by the Official Court Reporter.
>
> 8. All relief sought by the Applicant's 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 filed in this court on March 16, 2023 is unrelated and not relevant to any relief sought by the Application for Writ of Habeas Corpus now pending.

*Ex parte Hall*, No. WR-86,568-01 CR at 588-91. Hall's failure to preserve the issue of bias for review based on his failure to recall the witness or to seek transcription lies squarely at his feet.

Finally, Hall's petition presents a poor vehicle for consideration of this claim. Hall's arguments were presented in a simple motion before the habeas court not full-fledged briefing before an appellate court. At the very least, the state's highest court should have a chance to rule on the merits of a claim that was not properly presented.

## CONCLUSION

For the foregoing reasons, the Court should deny Green's petition for writ of certiorari.

Respectfully submitted,

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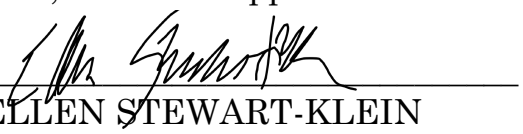

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