No. 23-7322

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

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

THIS IS A CAPITAL CASE

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Petitioner Gabriel Paul Hall filed his Petition for a Writ of Certiorari ("Pet.") on April 9, 2024. Respondent filed his Brief in Opposition ("BIO") on June 10, 2024. Petitioner now files this Reply to Respondent's Brief in Opposition.[1]

I. Because the trial court's judgment cannot be reviewed by any state appellate court, that judgment was rendered by the "highest court of a State in which a decision could be had" within the meaning of § 1257.

In his Statement of Jurisdiction, Petitioner cited three opinions in which this Court found it had certiorari jurisdiction to review the decision of a trial court. Pet.

[1] In this Reply, Petitioner addresses only those arguments made by Respondent he deems merit a reply.

at 6. In his BIO, Respondent argues those opinions are distinguishable from the trial court order at issue in Hall's case because none of the three pertained to a situation where an appellate court had dismissed a subsequent appeal for want of jurisdiction. BIO at 6-7. However, Hall's having attempted to appeal the trial court's order to the Texas Court of Criminal Appeals and that court's having subsequently dismissed the appeal for want of jurisdiction does not leave this without certiorari jurisdiction to address the question presented in Hall's petition. As this Court's opinion in *Western Union Telegraph Company v. Hughes*, 203 U.S. 505 (1906) makes clear, the CCA's having decided that it was without jurisdiction rendered the trial court the highest state court in which a decision could be had. 203 U.S. at 507; *see also* Stern & Gressman, Supreme Court Practice § 3.11 (7th ed. 1993).

II. The question of whether the process through which the state allowed Hall to raise his ineffective assistance of counsel claim comports with the dictates of due process is a federal question which this Court can, and should, review.

Respondent then suggests that, because Hall does not have a constitutional right to a state habeas proceeding, any question about the process employed by the state in making such a proceeding available to Hall is not one that is reviewable by this Court and cites this Court's opinion in *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52 (2009), in support of this proposition. BIO at 7-8. Of course, as the *Osborne* Court made clear, when the state gives a defendant a right to pursue relief through some vehicle that is not required by the Constitution, the manner by which the state makes that right available to the defendant must comport with the dictates of due process. 557 U.S. at 67-68; *see also*

Conn. Bd. of Pardons v. Dumschat, 452 U.S. 458, 463 (1981); *Meachum v. Fano*, 427 U.S. 215, 226 (1976); *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

This Court has repeatedly made clear that a defendant has a fundamental right to the effective assistance of counsel. *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003); *see also Martinez v. Ryan*, 566 U.S. 1, 12 (2012) ("The right to the effective assistance of counsel at trial is a bedrock principle in our justice system."). Because Texas provided Hall with a post-conviction proceeding, the manner which it provided that proceeding to him had to comport with due process, especially with respect to his fundamental rights (including his right to raise a claim that he was denied the effective assistance of counsel). Rule 26.052 operated in a way to prevent Hall his full and fair opportunity to raise his Sixth Amendment claim. It did this by creating a conflict of interest with his trial counsel, who, under state law, was a necessary witness at his evidentiary hearing. *See Rylander v. State*, 101 S.W.3d 107, 111 (Tex. Crim. App. 2003) ("trial counsel should ordinarily be afforded an opportunity to explain his actions before being denounced as ineffective"). In other words, Rule 26.052 operated in a way to offend Hall's ability to raise his Sixth Amendment claim in a proceeding not marred by his trial attorney's conflict of interest.[2]

[2] Neither Respondent nor the trial court has cited any examples of an attorney who was removed from the list of those eligible for capital appointments being later reinstated. See BIO at 11, Pet. at Exhibit A. Likewise, Counsel are unaware of any such attorneys. However, even assuming *arguendo* that an attorney would be reinstated after some period of time, he nonetheless possesses an interest in not being found ineffective because of the damage to his professional and

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: June 27, 2024

Respectfully submitted,

/s/ David R. Dow

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pecuniary interests he would suffer during the time between when he was found to be ineffective and then subsequently reinstated.