

QUESTION(S) PRESENTED

WHETHER THE PETITIONER IS ENTITLED TO EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS IN 28 U.S.C. § 2244(d)(1)?

WHETHER THE 5TH CIRCUIT HAS SIDESTEPED THE COA PROCESS THEREBY, DECIDING AN APPEAL WITHOUT JURISDICTION?

WHETHER PETITIONER IS ENTITLED TO AN EVIDENTIARY HEARING IN FEDERAL COURT?

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

YATES V STATE NO. 14-03-01231-CR, 2004 WL 2514296
(TEX. APP. - HOUSTON 14TH DIST. (2004))

EX PARTE YATES NO. WR-73,131-02 (TEX. CRIM. APP. 2014)

EX PARTE YATES NO. WR-73,131-03 (TEX. CRIM. APP. 2020)

YATES V LUMPKIN NO. 4:22-CV-2523 (S.D. TEX 2023)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

KENT V UNITED STATES 383 U.S. 541 (1966)

BOHE V CITY OF COLUMBIA 378 U.S. 347 (1964)

MOON V STATE 451 S.W.3d 28 (TEX. CRIM. APP. 2014)

EX PARTE THOMAS 623 S.W.3d 370 (TEX. CRIM. APP. 2021)

STATUTES AND RULES

28 U.S.C. § 2244(d)

TEX. FAM. CODE SEC. 54.02(h)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☒ For cases from **state courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the 263RD DISTRICT COURT court appears at Appendix D 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 JANUARY 26, 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was 3-9-22.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14TH AMENDMENT

28 U.S.C. 2244 (d)(1)

28 U.S.C. 2254 (d)(2)

TEX. FAMILY CODE SEC. 54.02 (h)

STATEMENT OF THE CASE

DURING THE PENDENCY OF A STATE POST CONVICTION WRIT STYLED EX PARTE YATES WR-73, 131-02, THE FACTS SHOWING NO HEARING WAS EVER HELD IN COURT ON THE ISSUE TO WAIVE JURISDICTION OF JUVENILE COURTS AND TRANSFER THE CASE TO STATE DISTRICT COURT AS REQUIRED BY STATE STATUTORY PROVISION TEX. FAM. CODE SEC. 54.02 (b) AND THE DUE PROCESS CLAUSE OF THE 14TH AMENOMENT. ON MATERIALLY INDISTINGUISHABLE SET OF FACTS, THE TEXAS COURT OF CRIMINAL APPEALS REVERSED A CONVICTION IN MOON V STATE 451 S.W.3d 28 (TEX. CRIM. APP.) DURING THE PENDENCY OF THE STATE POST CONVICTION WRIT, THE TEXAS COURT OF CRIMINAL APPEALS OVERRULED "MOON" AND APPLIED THE RULING RETROACTIVE TO PETITIONERS' CASE. EX PARTE THOMAS, NO. WR-89, 128-01, 2021 WL 1204352 (TEX. CRIM. APP.) THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION GRANTED RESPONDENTS SUMMARY JUDGMENT MOTION TO DISMISS AS TIME BARRED. YATES V Lumpkin NO. 4:22-CV-2523 (2023).

REASONS FOR GRANTING THE PETITION

THE FACTS DEVELOPED DURING THE STATE POST CONVICTION WRIT OF HABEAS CORPUS PROCEEDINGS SHOW PROSECUTOR "COLLIN KENNEDY" DID NOT RECALL ATTENDING A JUVENILE CERTIFICATION HEARING. APPX E

THE AFFIDAVIT OF "KELVIN D. YATES" (PETITIONER'S FATHER) AND "KELTON V. YATES" (PETITIONER) SHOW NO CERTIFICATION HEARING EVER HELD. APPX F-G

OVER STATE OBJECTIONS, THE STATE HABEAS JUDGE REQUESTED A REMAND ORDER DUE TO THE GRAVITY OF THE ISSUES TO BE DESIGNATED AND RESOLVED.

APPX H CONTENTS OF THE STATE POST CONVICTION WRIT IS AT

APPX I PROPOSED FINDINGS ARE AT APPX J THE CRIMINAL DEFENSE LAWYER'S ASSOCIATION VOICED CONCERN OVER THESE TYPE OF ISSUES. APPX K

THE PETITIONER'S CASE IS MATERIALLY INDISTINGUISHABLE FROM THE SET OF FACTS ADDRESSED IN KENT V. U.S. 383 U.S. 541 (1966).

THE 5TH CIRCUIT OPINION PROVIDED NO REASONS FOR THERE FINDINGS.

APPX A THERE IS NO RECORD SUPPORT FOR THE 5TH CIRCUIT DECISION.

THE ORDER TO WAIVE JURISDICTION IS CONSTITUTIONALLY INVALID UNDER "KENT" AS IT FAILS TO COMPLY WITH TEX. FAM. CODE SEC. 54.02 (b) BY OMITTING FACTUALLY SUPPORTED CASE SPECIFIC FINDINGS. THERE IS NO RECORD OF A JUVENILE CERTIFICATION HEARING EVER TAKING PLACE.

THE FACTUAL PREDICATE OF PETITIONERS' CLAIMS WERE NOT DISCOVERED UNTIL FACTUAL RECORD DEVELOPMENT IN STATE POST CONVICTION WRIT PROCEEDINGS. 28 U.S.C. 2244(d) SHOULD NOT APPLY TO BAR THE PETITION.

DURING THE PENDENCY OF POST CONVICTION WRIT PROCEEDINGS, THE TEXAS COURT OF CRIMINAL APPEALS OVERRULED MOON V STATE 451 S.W.3d 28 (TEX. CRIM. APP.) WHICH REQUIRED STRICT COMPLIANCE WITH TEX. FAM. CODE SEC. 54.02 (b), CONSISTENT WITH DUE PROCESS AS HELD IN KENT V U.S. 383 U.S. 541 (1966). THE COURT OF CRIMINAL APPEALS' DECISION IN EX PARTE THOMAS NO. WR-89,128-01, (TEX. CRIM. APP. 2021) WAS APPLIED RETROACTIVELY TO PETITIONER IN VIOLATION OF THE SUPREME COURT DECISION IN BOUIE V CITY OF COLUMBIA 378 U.S. 347 (1964) "HOLDING, COURTS THAT APPLY IT'S NEW CONSTRUCTION OF STATUTORY LAW TO AFFIRM CONVICTIONS RETROACTIVELY, DENIES RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION".

3

REASONS TO GRANT PETITION - CONT

THE LEGAL LANDSCAPE CREATED WHEN THE TEXAS COURT OF CRIMINAL APPEALS OVERRULED "MOON" IN "THOMAS", WAS A RECENT DECISION, APPLIED RETROACTIVELY, IN VIOLATION OF BOUIE V CITY OF COLUMBIA 378 U.S. 347 (1964).

THE STATE COURT DECISION IS CONTRARY TO "KENT" AND "BOUIE".
28 U.S.C. 2254 (B)(1)(2)

THE PETITIONER SHOULD BE ENTITLED TO EQUITABLE TOLLING UNDER
28 U.S.C. § 2244 (d)(1)(B)(D)

IT IS OBVIOUS THE 5TH CIRCUIT INVERTED THE STATUTORY ORDER OF OPERATIONS FOR CERTIFICATE OF APPEALABILITY WHERE NO TYPE OF REASONING TO SUPPORT IT'S FINDINGS ARE APPARENT FROM THE RECORD. APPX A THE COURT PLACED TOO HEAVY A BURDEN ON THE PETITIONER AT THE COA STAGE.

AN EVIDENTIARY HEARING IS WARRANTED TO FURTHER DEVELOP FACTS SHOWING NO DUE PROCESS JUVENILE CERTIFICATION HEARING AND VALID WAIVER OF JURISDICTION EVER OCCURRED FOR PURPOSES OF 28 U.S.C. 2244[§] (d)(1)(B)(D)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KELTON VONDRE VATES — PETITIONER
(Your Name)

VS.

STATE OF TEXAS — RESPONDENT(S)

PROOF OF SERVICE

I, KELTON V. VATES, do swear or declare that on this date, _____, 20____, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

KEN PAXTON, ATTORNEY GENERAL OF TEXAS
P.O. BOX 12548
AUSTIN, TEXAS 78711-2548

I declare under penalty of perjury that the foregoing is true and correct.

Executed on APRIL 12, 2024

Kelton V. Vates
(Signature)