

23-7420

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR - 3 2024

OFFICE OF THE CLERK

In Re STEVEN MICHAEL BACKSTROM PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

STEVEN MICHAEL BACKSTROM
(Your Name)

9601 Spur 591
(Address)

AMARILLO, TX 79107
(City, State, Zip Code)

N/A
(Phone Number)

IN THE SUPREME COURT
OF THE UNITED STATES

IN RE

STEVEN MICHAEL BACKSTROM,
Relator

ON PETITION FOR A WRIT OF HABEAS CORPUS

TO THE HONORABLE JUSTICES OF SAID COURT:

NOW INTO COURT comes STEVEN MICHAEL BACKSTROM, Relator pro se with his Petition For a Writ of Habeas Corpus and inso would respectfully show this Honorable Court the following:

I. QUESTIONS PRESENTED

1. Does a failure by trial counsel to investigate known-to-be material facts and/or witnesses constitute federally defined ineffective assistance of counsel? If yes, in defense of such habeas claims, does the submission of a false affidavit constitute a fraud upon the state court? If yes, is such a submission an admission by conduct? And if so, has any federally protected due process right been violated?
2. Did the federal courts abuse their discretion in failing to exercise their vast equitable powers in not granting relief where its plain on its face that Relator's habeas judgment was obtained by fraud which in turn amounts to an admission by conduct to the claimed IAC?
3. Based on the facts and circumstances described, would the average reasonable-minded citizen on the outside looking in see a corruption in the truth-seeking process?

II. LIST OF PARTIES

DEFENDANTS:

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. BOX 12548
AUSTIN, TEXAS 78711

33rd JUDICIAL DISTRICT ATTORNEY'S OFFICE
1701 E. Polk St., Ste 90
Burnet, Texas 78611

RELATOR:

STEVEN MICHAEL BACKSTROM
TDCJ #1657938
9601 Spur 591
Amarillo, TX 79107

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V. CITATIONS OF OFFICIAL REPORTS AND/OR ORDERS

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- a. Trial court's findings and conclusions (writ 35498-B), Attachment 1;
- b. Texas Court of Criminal Appeals' remand order, see Ex parte Backstrom, 2012 Tex.Crim.App. 614 (unpub'l);
- c. Texas Court of Criminal Appeals' denial, Attachment 2;
- d. Texas Court of Appeals' mandamus mandate, 2020 Tex.App. LEXIS 2194 (unpub'l);
- e. Texas Court of Appeals' mandamus mandate regarding reconsideration, In re Backstrom 2023 Tex.App. LEXIS 4611 and LEXIS 8018.

U.S. District Court:

- f. Movant's first timely-filed writ of habeas corpus into the Western District Court (1:13-cv-00037-LV);
- g. Movant's order regarding his actual innocence writ of habeas corpus, Backstrom V. Davis, 2016 U.S. Dist. LEXIS 111841;
- h. Movant's 60(b)(3)(d)(3) motion, (1:21-cv-574-LV);
- i. Movant's 60(b)(6) motion (1:13-cv-037-LV)

Circuit Court:

- j. Movant's first request to reenter federal habeas corpus, no.: 18-50663; Attachment 8;
- k. Movant's 60(b)(6) appeal no.: 21-50880; Attachment 9;
- l. Movant's second request to reenter federal habeas corpus, no.: 22-51056 ; Attachment 10.

Supreme Court

Movant entered the Supreme Court several times with no success, he no longer has the numbers for those pleadings.

VI. JURISDICTIONAL STATEMENT

As Movant has moved through every conceivable legal option in both State and federal court, with no substantive review, he moves into the Supreme Court as his final viable option under 28 U.S.C. § 1651(a) and Supreme Court Rule 20 § 4(a),(b).

VII. THE COURT'S APPELLATE JURISDICTION STATEMENT

Movant believes that the issues he presents will be of a first impression, at least in part: a state habeas judgment obtained by discovered/proven-after, fraud upon the habeas tribunal, constituting an admission by conduct of the habeas ineffective assistance of counsel claims; thus, a reasonable probability that the outcome of that proceeding would have differed minus the fraud; therefore, with a different outcome in that proceeding, this transcends into a different outcome of the trial minus counsel's ineffectiveness, of which he ultimately admitted to.

There is an ongoing abuse of the legal process by those persons "in charge" of Relator's habeas filings; thus, relief in any state court is beyond reach, a corruption in the truth-seeking process.

Based on these exceptional circumstances, this Court can stop these deprivations and restore confidence in the judicial process. With federal courts now out of reach, Movant moves for redress in this Honorable Court.

VIII. HABEAS APPLICATION IN THE DISTRICT COURT

Relator's first § 2254 (1:13-cv-00037-LV) was timely filed but withdrawn to file actual innocence in state court. Upon denial, Relator moved back into federal court: actual innocence - denied

with prejudice as time-barred because during the punishment phase of trial, Movant "confessed" to the crimes and failed to address it in his habeas corpus, therefore, acted in bad faith, see Backstrom V. Davis, 2016 U.S. Dist. LEXIS 111841 at *8 (unpub'l). Movant replied with affidavits from persons privy to the "confession" as a counsel-driven strategy to elicit probation from the jury, Attachment 3. The affidavits arrived at the federal courthouse on the fifth and ninth day after rejoinder to the Magistrate's Report, but the Judge made his denial without the evidence on the fourth day. A 60(b) motion was filed but failed. On 6/28/2021. Movant filed a 60(b)(3)(d)(3) motion (1:21-cv-574-LV) - denied without prejudice because fraud on the state court cannot be the basis for relief in federal habeas corpus and because fraud on the court is limited to fraud on the federal court. On 8/30/2021, Relator filed his 60(b)(6) (Buck - Trevino) motion (1:13-cv-037-LV) - denied because although Movant wasn't challenging his conviction, he was attempting to "reopen" and "relitigate" previously denied habeas claims. Attachment 4. Relator asserts that the claims and evidence herein have been presented to the district court.

IX CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V:

"In all criminal prosecutions, the accused shall enjoy the right ... to have the [effective] assistance of counsel for his defense.

United States Constitution, Amendment XIV:

No State "deprive any person of life, liberty, or property without due process of law, ..."

X. STATEMENT OF THE CASE

This writ of habeas corpus is advanced to redress a 2012 State habeas corpus judgment obtained by lawyerly fraud, known to the State, the U.S. District Court and the fifth Circuit - each ignoring their duty to protect the integrity of the judicial process. Movant is moving this Honorable Court to determine whether under the totality of the circumstances, trial counsel submitted a false affidavit in defense of Relator's habeas corpus IAC claims; whether that submission constituted a fraud upon the court; thus, an admission by conduct; thereby, by misrepresentation, guilty of the alleged ineffectiveness; and whether the federal courts in their denials, abused their discretion. Given these circumstances, is there a corruption in the truth-seeking process? as it would appear.

XI. WRIT GRANT STATEMENT

In the matters now before the Bar, there have been State and federal court adjudications, resulting in decisions that are unreasonable in light of all of the evidence presented to those courts; the issues presented will aid the Court's appellate jurisdiction which in turn warrants the Court's discretion; and, given the facts and circumstances of the court's opinions, justice cannot be reached in any other court or forum minus this Court's intervention.

XII STATEMENT OF ISSUES PRESENTED

Relator's habeas issue, albeit singular, is multi-pronged: 1) his conviction is the product of admitted-to ineffective assistance of trial counsel (IAC); 2) in defense of Relator's habeas claims, counsel submitted a false affidavit; known but unprovable at the time of its submission; therefore, not inappropriately used as affirmative evidence to deny relief; 3) Relator's inability to prove the fraud upon its presentation has prevented him from adequately litigating his IAC claims in either State or federal courts; 4) the general rule that fraud upon a state post-conviction proceeding precludes federal relief is inappropriate in this case; and 5) there is, at minimum, an appearance of a corruption in the truth-seeking process.

In other words, but for the fraudulent affidavit, an admission by conduct of the claimed IAC, the outcome of the state habeas tribunal would have differed - ending in vacatur, which ultimately transcends into: minus the IAC, there is a reasonable probability that the outcome of the trial would have differed.

XIII. ARGUMENTS AND AUTHORITY

A) Confinement

Backstrom is unlawfully confined from his liberty pursuant to his conviction out of the 33rd Criminal District Court, Burnet County, Texas, BY the TDCJ Director Bobby Lumpkin, at the Clements Unit, 9601 Spur 591, Amarillo, Texas, Potter County.

B) Summary of The Arguments

Relator's conviction is the product of admitted-to IAC and its symbiotic due process. In defense of the IAC claims, trial counsel subverted the legal process by and through lawyerly fraud. Both State and federal courts refuse to investigate their victimhood: the State via a three-monkey's approach and federal courts under the premise that because the alleged fraud occurred in State postconviction proceedings, federal intervention is beyond reach, which is inappropriate under the circumstances of this case. In short, it was the State postconviction "infirmity" that proves the IAC - yet to be acknowledged.

The Elephant in The Room

Relator's evidence of fraud is overwhelming, thus, the courts have clearly recognized Relator's conviction as having been obtained through IAC and his State habeas judgment as having been obtained by fraud, preventing adequate litigation of Relator's claims in any court thereafter. Furthermore, based on those facts, no member of the Bar has informed the investigative arm of the Texas State Bar of counsel's fraud. See Tex.R.Prof.Conduct, Rules 3.03, 8.04 and 8.03

From a federal court-specific view, the refusal to exercise its considerable equitable powers is unreasonable in light of the facts, circumstances and evidence presented.

With all said and done, the average, reasonable-minded citizen on the outside looking in would see a corruption in the truth-seeking process ¹,

C) Question One:

Does a failure by trial counsel to investigate known-to-be material facts and/or witnesses constitute federally defined ineffective assistance of counsel? If yes, in defense of such claims in State habeas corpus, does the submission of a false affidavit constitute a fraud upon the state court? If so, is such a fraud an admission by conduct? And, if so, has any federally protected due process right been violated?

Part A:

Does a failure by trial counsel to investigate known-to-be material facts and/or witnesses constitute federally defined ineffective assistance of counsel?

a) IAC Standards

To prevail here, Relator must meet the two-pronged test set out in Strickland v. Washington, 466 U.S. 668 (1984). 1) he must show that his trial attorney, Mr. Eddie Shell (Mr. Shell)'s representation fell below an objective standard under prevailing professional norms, -Id at 690, while overcoming the strong presumption of reasonable conduct, Burt v. Titlow, 571 U.S. 12 (2013). 2)

Prejudice must be established: a reasonable probability that minus the deficient performance, the outcome of the trial would have differed, -Id at 466 U.S., 694.

Movant accused Mr. Shell of failing to investigate known material facts/witnesses; more pointedly: he failed to move to prevent the

¹ See In re Murchison, 349 U.S. 133,136 (1955) ("A fair trial, in a fair tribunal, is a basic requirement of due process."); see also Kaley v. U.S., 2014 U.S. LEXIS 1634 at ****47; Weiss v. U.S., 1994 U.S. LEXIS 1137 at ****30; Burson v. Freeman, 1992 U.S. LEXIS 3125 ("Our system of law always endeavors to prevent even the possibility of unfairness."); and Liljeberg v. Health Svcs. Acquisition Corp., 1988 U.S. LEXIS 2737 at ****27 ("To perform its high function in the best way, 'justice must satisfy the appearance of justice.'").

suppression of known material and exculpatory impeachment evidence, and, thus, Mr. Shell's was unable to impeach a State's key witness. Mr. Shell failed to interview known material fact witnesses and failed to present a material promised witness. And, due to Mr. Shell's ignorance, he exited the guilt/innocence phase of the trial expeditiously - without presenting a defense.

b) Failure to Investigate

"Specific choices made after a thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Strickland at 690; however, when making strategic decisions, counsel's conduct must be reasonable, Roe V. Flores-Ortega, 528 U.S. 470,481 (2000). "Counsel has a duty to make reasonable decisions that make particular investigations unnecessary," -Id at 690-91. The focus then in failure-to-investigate claims, is the reasonableness of the investigation, [or lack thereof]." Wiggins V. Smith, 539 U.S. 510,527 (2003).

Relator's first two claims surround believed-to-be illicit email communicate between the State's outcry witness, (Ms. Castillo) and Relator's minor son, 16 years old at the time, see Attachment 5: P. 2: dated January 14, 2008; Tex.P.Code § 43.24: sale, display, or distrobution of harmful material to a minor. The State filed a motion in lemine to suppress the emails; instead of arguing to prevent their suppression, Mr. Shell simply sat down with no argument.

"My name is EDDIE G. SHELL, ... and the facts stated in this affidavit are within my personal knowledge and are true and correct." Attachment 6:P. 1.

Mr. Shell averred within his sworn affidavit that he didn't believe that the "writings" offered all that much for the defense; he averred that the "writings" were sexual in nature (clue #1), Attachment 6: Item C, excerpts from a novel (authored by Ms. Castillo) and that he advised Relator not to submit them to CPS. Mr. Shell went on to state that to the best of his memory he cross-examined Ms. Castillo in trial about the writings and that he didn't want any long-speaking objections at that point in the trial and that he didn't believe the judge would have admitted the evidence; however, that he cross-examined Ms. Castillo sufficiently, -Id. Mr. Shell broached the subject again, P. 5:last par, outlining that the State filed a motion in limine to exclude the writings and had Movant followed his "advise" by not submitting them, P. 6, he would have "most likely" been successful at getting the documents in at trial. This rendition is a lesson in contrasts.

Mr. Shell twice stated that he cross-examined Ms. Castillo but the record is silent as to any such examinations; thus, his failure to impeach Ms. Castillo. After the State's initial salvo to suppress, there were no substantive discussions on the subject.

Mr. Shell's excuse regarding "long-speaking" objections is nonsensical because at that point in the trial, it was the first order of business on day-one, Attachment 7: Pp. 4-7.

As to whether the emails would have been admitted, the Judge certainly thought the matter convoluted enough to review the matter outside the presence of the jury, Attachment 7:P. 5, (clue #2).

The Judge never saw this evidence. As to Mr. Shell's "advise." see Attachment 11: dated Aug. 1, 2009 explaining to Mr. Shell that Relator had discovered the emails, made a police report, contacted the National Center for Missing And Exploited Children (NCMEC), Attachment 12, and made an e-complainant to CPS, all before informing Mr. Shell of the emails. Mr. Shell never advised Relator about anything[.]

Although voluninous, the emails between Ms. Castillo and Relator's son (Kris) clearly demonstrates intentional grooming by Castillo (clue #3), then a seduction (clue #4) upon one she knew to be a minor (clue #5) which appealed to his pruient interest (clue #6), see Attachment 13(a),(b).

Prejudice

Harm presents in three ways: 1) as Attachment 12 demonstrates, NCMEC's Sr. Analyst, Mr. Kevin O'Brien, remotely entered Ms. Castillo's computer to the extent federal law allowes. In doing so he discovered "[u]nknown additional victims," P. 3, and "CHILD EROTICA," P. 5.

2) Ms. Castillo created a statement for police, Attachment 14, and an interview was conducted by police, Attachment 15²². On P.3: par 3 of Attachment 14, Ms. Castillo referenced herself as having been twice raped where "no one believed [her]" when she reported them. Had Mr. Shell investigated he would have discovered no evidence exists to support this claim and he knew to do so - discussed ahead.

² All referenced and incorporated transcribed evidence was transcribed by Mr. Shell, Attachment 6:P. 2.

3) Within Attachment 14, Ms. Castillo stated that she told complainant (Della) that she had two choices with her being the only person capable of that decision: she could report it or NOT, P. 3. See also Attachment 15; P. 4: sentences 11 & 12. Now see sentence 15 where CASA "crawled" all over her for having told Della. Revisiting Attachment 14: P. 4: par 2, Ms. Castillo then told Della that if she [Della] didn't outcry, she [Castillo] "would" get into trouble. Mr. Shell failed to investigate the report/statement, of which he knew to do so for that reason specifically, preventing him from impeaching the integrity of the State's case in the eyes of the jury for multiple false statements - to police and Della - which in turn placed Della under duress to outcry.

Relator also accused Mr. Shell of failing to interview known material fact witnesses, chief among them was (Lori) Halbert.

Lori was a friend of Relator's who had a close relationship with all of the principles named and yet to be named. Lori accompanied Relator to Mr. Shell's office twice, once when Relator hired him and a year later when invited to discuss sentencing parameters with Jennifer, Mr. Shell's assistant.

With respect to Lori, Mr. Shell defended himself, Attachment 6: Pp. 4-6, stating that his office "communicated" with Lori, she was "talked to" in person, by phone and by email on numerous occasions. While in jail, Lori acted as Relator's intermediary. There are numerous emails between Lori and Jennifer, Attachment 16, initiated by Lori discussing minor details mostly: general questions and witness information; however, some issues of import

were discussed: Lori's inquiry about testifying for the defense, i.e., an interview, Pp. 4-6, her witness list (seperated as Attachment 17) and her attempts to get Mr. Shell to communicate with Relator, Pp. 4-6,9,10 & 12. See Attachment 18: V4:Pp. 45-47:

Q: Just real quickly Ms. Halbert, have you and I ever spoke?

A: No.

Q: You and I never spoke?

A: Correct.

Redirect Examination

Q: ... who did you send the emails to?

A: To Jennifer, Shell's assistant.

Redirect Cross-Examination

Q: ... did you ever come into our office for an interview?

A: No.

Lori and Movant made clear to Mr. Shell's offoce that Kris Backstrom's input in this case was paramount. Kris was never interviewed, Attachment 13b.

Prejudice

During Della's police interview she stated that she had been raped in the local park (three versions), Attachment 19. At trial, when confronted about this lie, she told the jury that Relator had told her to lie, Attachment 20: V8:P. 163.

Kris knew this would play a part in the trial and a pretrial interview would have revealed that Della told Kris about this "rape" in mid 2006 making it impossible for Movant to have told her to lie to police about a rape to occur 1½ years in the future, Attachment 21a & b.

Mr. Shell did not interview Della; therefore, any post-Della

testimonial interview would have been granted for any of the defense witnesses for rebuttal purposes; thus, the jury would have learned of Della's many lies and a propensity to do so without compunction. See Attachment 15:P. 3:LL. 16-18; P. 4:LL. 16-19. See Attachment 22, demonstrating her outcry was a blatant lie. See also Attachment 6:P. 5 regarding Ms. Untermeyer.

Della also attested that Movant raped her in December of '07, Attachment 23: V8:P. 164 and from then forward, she and Relator had a bad relationship, Attachment 24: V8:P. 212. Now see Attachment 25: note the date and title: "That is my Best friend," a statement hardly indicative of a bad relationship. Any post-testimonial interview with Kris (or Lori) would have shown Della in a different light; impeaching the integrity of the State's case.

Attachment 6:P. 3:

"Being aware of any information in the possession of [Relator], I was aware of any information that [Relator] shared with me." -Id at Item C.

Pp. 4,5: F:

"[Relator] had instructed my office to interview the following witnesses:

- a. Stephanie and Coy Guenther
- b. Stephanie Idell. -Id at P. 5

par. 2:

"These are the only witnesses that [Relator] asked me to interview."

Now see Attachment 17: Lori's witness list to Mr. Shell. That document was the only reference to either the Guenthers or Ms. Idell. Note that Attachment 17 contains five names, not the three Mr. Shell purported. Note also the syntax of Lori's document.

Now armed with the knowledge that Mr. Shell was aware of information that Relator shared with him, see Attachment 26: letters to Mr. Shell from Movant while he was in jail. See 26(a): numerous attempts to call Mr. Shell's office to no avail and evidence of import needing to be discussed and videos needing to be viewed; P. 4: mentioning Dr. Thomas for interview; Item 8: naming Ms. Campbell, Della's math teacher, SPECIFICALLY MELISSA: her as the PTA president while emailing obscenity to minors (2 schools); also mentioning how Castillo didn't give Della any choice but to out-cry; 26(e): mentioning the need to view discovery DVDs; 26(d): mentioning Dr. Thomas again and her call to CPS; P. 2, mentioning Castillo's two rapes with no reports; Item 5: Dr. Thomas again; and Item 13: Ms. Campbell again.

Clearly Mr. Shell was aware of several defense witnesses of import; however, Mr. Shell neither discussed this with Relator nor did he interview any of them.

Relator also accused Mr. Shell in his failure to present a promised witness(es): Ms. Judy Tull and/or Ms. Suzy Sims, Della's Pastors, Attachment 27: V3:P. 24. In response, Mr. Shell stated that his "office attempted to interview the pastors and Tull ... but they were not cooperative." -Id at P. 5:par 2; this of course begs the question: if they were "uncooperative," why did Mr. Shell offer them as witnesses, or, was Mr. Shell prepared to offer an uncooperative witness for the defense? After the State rested, Relator insisted Mr. Shell put the pastors on the stand due to their vast knowledge of Della's family and her upbringing. Mr Shell called Ms. Tull (only) who couldn't make it due to her

being on oxygen and having been notified on short notice (Friday afternoon), however, she could attend on Monday, 2½ days away (subpoenas were issued), Attachment 28. Mr. Shell further stated that the trial court called Ms. Tull to discuss attachments, however the record is silent.

Prejudice

There are at least three consequences to Mr. Shell's unfulfilled promise to the jury: 1) the unfulfilled promise created a negative inference towards Relator in general as well as Mr. Shell's credibility; 2) the Promised witness' testimony would have impeached Della as not only having been raised in an environment where prevarication was the norm, but that she was ostensibly proficient in her truthless endeavors, see Attachment 29: Pastor's transcribed interview with police, and 3) such impeachment would have transcended to the State's case as a whole with respect to the State's reliance upon duplicity and manipulation to effectuate a conviction.

Finally, for this writ's purpose, Relator accused Mr. Shell of exiting the guilt/innocence phase of the trial post haste; thus, providing no defense to the jury. This is verified at V8:P. 224:

COUNSEL: "It's either let's get this done or let the chips fall.";

COUNSEL: "Let's get it done, then we won't work Saturday."

COUNSEL: "Let's get this over with. I have a compelling reason to do this tonight." (Three witnesses with plane tickets out of town the next day).

COURT: "It's not making sense about them having plane tickets."

There were only two people: Relator's mother and sister, neither

testifying and both extended their stay. V9:P. 117 extolls Mr. Shell's busy schedule with difficulty resuming the trial the following Monday. See Attachment 30.

Relator moves forward under the premise that he had in fact made federally defined IAC claims against Mr. Shell. The question now is whether in defense of those claims, Mr. Shell committed a fraud upon the State Court/Tribunal.

Q1: Part B:

In defense of State IAC claims via a sworn affidavit, does the submission of a false affidavit constitute a fraud on the State court/tribunal?

Relator asserts that Mr. Shell, in defense of Relator's IAC claims provided an affidavit rife with material misrepresentations of fact of which the State courts used as affirmative evidence to both recommend and deny relief. Minus the falsities, there is a reasonable probability that the outcome of the habeas proceeding would have differed; thus, transcending that minus the admitted-to IAC (admission by conduct), there is a reasonable probability that the outcome of the trial would have differed.

The State defines fraud upon the court as:

"A lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the proceedings."

Sullo V. Kubosh, 2019 Tex.App. LEXIS 10018 at *70.

In federal application, the most common definition used is that found in Moore's Federal Practice, "Fraud upon the court should embrace only that species of fraud which does or attempts to de-

file the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner ..."7 Moore, Federal Practice ¶ 60.33 at 515 (1971); Browning V. Navarro, 826 F2d 335,346 (5th Cir. 1987).

As the facts indicate thus far, Mr. Shell presented a sworn affidavit complete with false facts of which the State courts used as affirmative evidence to deny relief.

Whether federally or State defined, Mr. Shell's affidavit constitutes a fraud upon the court. Does this however garner any respect as to harm? Thus far it has not.

Q1: Part C:

Would a fraudulent affidavit submitted during a state post-conviction proceeding constitute an admission by conduct?

Admission by conduct cases are infrequent (minus "flight" issues); however, Relator was able to locate some cases of import: Mason V, Williams ³, Ziang Sung Wan V. U.S. ⁴, McQueeney V. Willmington Trust Co. ⁵, and Reilly V. Sheridan Trucking Co., ⁶.

³ 1909 U.S. LEXIS 1885: The Mason Court found that Henry Hudson, knowing the name under which a business was run, of which he likely knew his name was exhibited as president - a corporation by name - of which he knew did not exist, and paid for goods as if other interests were concerned, constituted an admission by conduct. -Id at ****7.

⁴ 1924 U.S. LEXIS 3022: The High Court opined that one's silence might be used as evidence against him tending to establish by his conduct, an admission to the crime. -Id at ***9,10 (citing Braum V. U.S., 168 U.S. 532 (1897) -Id at ****7.

⁵ 1985 U.S. App. LEXIS 25060: "wrongdoing by the party in connection to its case, amounting to an obstruction of justice[,] is also commonly regarded as an admission by conduct." -Id at **15.

⁶ 2019 U.S. Dist. LEXIS 251952: The Reilly Court found that "[f]alse or inconsistent statements can be construed as indicating consciousness of liability." -Id at *15.

Based on federal stare decises, it appears that Mr. Shell's false affidavit amounts to an admission by conduct.

Q1: Part D:

Based on the facts and circumstances thus far, has any federally protected due process right(s) been violated?

Put another way, if the Court can agree that Relator suffered constitutional IAC and that it can fairly be stated that the IAC was admitted-to by and through fraud (proven after final state judgment) then can it be reasonably stated that Relator suffered a due process violation of constitutional dimension?

Rationale

Relator argues that this Court has made several opinions that appear to be in contrast to the judicial treatment thus far meted.

E.g., in 1967, the Court announced that its decision regarding the Due Process Clause "instructs safeguards, not the meticulous observances of state procedural prescriptions, but the fundamental elements of fairness in a criminal trial." Spencer v. Texas, 383 U.S. 554,563-64 (1967).

In DA's Office V. Osborne, 2009 U.S. LEXIS 4536, the Court altered Osborne's question to ask "whether consideration of Osborne's claim within the framework of the State's postconviction relief procedures 'offends some [fundamental] principle of justice'" or "transgresses any recognized principles of fundamental fairness in operation." (citing Medina V. California, 505 U.S. 437,446-48 (1992)).

Texas is notorious for its "white-card" denials. Relator's habeas denial was predicated upon proven-after fraud; therefore, the appropriate question here is whether that particular fraud "offends some fundamental principle of justice." See U.S. Constitution, Amendment XIV: [N]o State shall ... deprive any person of life, liberty, or property without due process of law.

The Fifth Circuit stated: "[i]nfirmities in state postconviction proceedings are not grounds for relief under § 2254, Attachment 10:P. 2:par 2, citing Moore V. Dretke, 369 F3d 844,846 (2004), Relator's proposed challenge did not 'state a claim that is cognizable in federal habeas review,'" citing In re Gentras, 666 F3d 910,911 (2001). This begs the question: what if the postconviction proceeding garnered the evidence to prove the IAC?

The Circuit Court's decision is in contrast to this Court's findings in Swarthout V. Cooke, 131 S.Ct. 859 (2011) (general improprieties occurring in state court proceedings are cognizable only if they create a fundamental unfairness that violated due process.); compare with Pennsylvania V. Finley, 481 U.S. 551,665 (1987) (postconviction relief procedures are constitutional if they comport with fundamental fairness). Based on the facts herein, it appears contrary to justice to deny relief, whether by state reconsideration, 60(b)(6), request for reentry into § 2254 habeas corpus, or, minus the District/Circuit Court's equitable powers.

Equitable Powers

D) Question Two:

Did the federal courts abuse their discretion in failing to exercise their equitable powers in this case?

Standards

In line with Trevino's finding that "[t]he right to effective assistance of counsel at trial is a bedrock principle in our justice system," and "is the foundation of our adversarial system," 2013 U.S. LEXIS 3980 at ****17; Shinn V. Rameriz, 2022 U.S. LEXIS 2557 at ***39, this Court has provided legal avenues to have claims reviewed by federal courts beyond AEDPA strictures. See e.g., Holland V. Florida, 560 U.S. 645-46 (2010) (one-year statute of limitations for AEDPA not jurisdictional and that an attorney's unprofessional conduct could warrant equitable tolling). The Court stated that courts of equity can and do draw upon decisions made in other cases for guidance but to be aware of circumstances, often hard to predict, could warrant special treatment under equitable principles, Baggett V. Bullitt, 377 U.S. 360,370 (1964) (case-by-case basis); Munaf V. Green, 553 U.S. 674,693 (2008) (presumption in favor of equitable tolling is reinforced by the fact that equitable principles have traditionally governed the substantive law of habeas corpus); Holmberg V. Armbrrecht, 327 U.S. 392,396 (1946) ("[I]n emphasising the need for flexibility for avoiding mechanical rules."). "The flexibility inherent in equitable procedure enables court to meet new situations that demand equitable intervention and to accord all relief necessary to correct ... particular injustices." Holland, 560 U.S. at 646. Whether the federal courts abused their discretion is up to this Court; however, it appears to Relator that the federal courts could and should have exercised those powers to grant relief in favor of justice as opposed to axiomatic denials.

The Appearance of Corruption

Question Three

Based on the facts and circumstances as described, would the average reasonable-minded citizen on the outside looking in, see a corruption in the truth-seeking process?

Relator has had many of his pleading decided in a manner that would qualify as suspicious, specifically those involving his fraud allegations. Given the number of denials and "white-cards" issued (AEDPA "adjudications" on the merits). Movant must ask if perhaps his interpretation of Texas' fraud-on-the-court jurisprudence is misplaced. See Ex parte Stoneman, 2018 Tex.Crim.App. LEXIS 369 (unpub'l) (the State accused counsel of making completely false statements to the Court of Criminal Appeals (C.C.A.), violating his duty to candor to the tribunal - Tex.R.Prof.Conduct, Rule 3.03. The C.C.A. formulated an order to the State Bar of Texas); Willies V. Comm.Lawyer Discpl., 2015 Tex.App. LEXIS 2466, (Willies, a lawyer, was found guilty of an "unmitigated and blatant lie" during a bench trial. Willies had procured and signed two guilty plea documents but during appeal he argued insufficiency of the evidence to support the conviction while failing to order the evidence into the appellate record - 3.03,8.04); Teter V. Comm.Lawyer Discpl., 2018 Tex.App. LEXIS 5846 (Teter was found guilty of violating 3.03 based on two grievances with one alleging the filing of false documents on behalf of people he did not represent); Cohn V. Comm.Lawyer Discpl., 1998 Tex.App. LEXIS 4831 (violating 3.03 for knowingly making a false statement of

material fact to a tribunal); Diaz V. Comm.Lawyer Discpl., 953 S.W. 2d 435 (Tex.App.-Austin 1997) (a false affidavit constitutes a false statement to a tribunal); and Ruhe V. State Bar, 1994 Tex.App. LEXIS 3948 (Ruhe, an attorney, executed and presented a false document to an office of the court) ⁶.

Texas' stare decises appears to be in Relator's favor ⁷.

Relator is aware of the difference between state and federal fraud on the court: federal law requires the fraud having been committed against a federal court. That said, in this case, does it really matter which court was violated? See Relator's 60(b)(3)(d)(3) motion [1:21-cv-574-LV] and his 60(b)(6) motion [1:13-cv-037-LV] (discussing counsel's state habeas fraud having affected his original timely-filed § 2254 and its subsequent voluntary dismissal).

Based on the asserted unreasonable denials and adjudications on merits outside of the alleged fraud on the court and its procured judgment in State habeas corpus, no court has offered Relator a forum in which to plead his case.

Equally egregious, the 33rd Criminal District Court, Office of the District Attorney for the 33rd Judicial District, Third Court

⁶ Tex.R.Prof.Conduct 8.04(a)(3) defines "fraud" to include conduct having purpose to deceive, and not merely negligent misrepresentation or failure to apprise another of relevant information. Although the rules don't define "dishonesty," "deceit," or "misrepresentation," courts applying 8.04(a)(3) have given those terms ordinary meaning, generally meaning a "lack of honesty, probity, or integrity in principle." and a "lack of straight-forwardness." See e.g., Rosas V. Comm.Lawyer Discpl., 335 S.W. 3d 311,316 (Tex.App.-San Antonio 2010, no pet.); Thawer V. Comm.Lawyer Discpl., 553 S.W. 3d 177,186-87 (Tex. App.-Dallas 2017, no pet.).

⁷ Relator's research could locate no pro se litigant successfully prosecuting a state fraud-on-the-court pleading/appeal.

Appeals, C.C.A., State Bar of Texas, U.S. District Court and the Fifth Circuit have all seen Relator's overwhelming evidence of Mr. Shell's fraud. from all of that evidence, the courts knew or should have known that based on the surrounding facts and circumstances, Relator's habeas corpus judgment was obtained by fraud; thus, his conviction was the product of constitutional ineffectiveness by Mr. Shell. Moreover, armed with this evidence, so State lawyer, judge, or court moved to the investigative arm of the Texas State Bar to investigate the facts, Tex.R.Prof.Conduct, Rule 8.03, which mandates such. Relator asserts that prosecutors and judges alike have a duty to administer justice. See Tex.Code Judicial Conduct Canon 3(A)(B)(1)(2)(5)(8) & (9) and 28 U.S.C. § 453.

With respect to the specter of corruption in the court's unwillingness to hear Relator's pleas or raise the matter with the State Bar, Relator directs the Court to see Western Union Tel. Co. v. Cooke, 1947 Tex.App. LEXIS 952 at *15,16. In discussing a judge's duty to evaluate jury decisions and evidence sufficient to justify a verdict, Judge Bond stated:

"If this were not so, then, under the mask of law, the law might be ignored and the citizen deprived of life, liberty or property, not by due process of law, but by fraud, misconduct, undue influence, whims, prejudices, ignorance or caprice of the jury, and court, instead of being where justice is jurisdictionally administered, becomes places where justice is mocked, scorned, trampled down and buried in a mire of prejudice and corruption, and the very purpose and object of the judicial department of government thwarted and made the medium of robbing, oppressing, and plundering and the people who are taxed to support and maintain it."

IX. SUMMARY

Relator was indicted, charged, jailed, tried and convicted of aggravated sexual assault of a child and burglary of a habitation w/intent to commit indecency w/child, Attachment 31. While incarcerated and awaiting trial, Relator knew he was in trouble with respect to his trial counsel, see e.g., Attachment 31: letters to Relator's friend extolling his plight. Relator asserts that due in whole to IAC, he was convicted.

Upon habeas remand and receipt of Mr. Shell's sworn affidavit, Relator recognized that document as a fraud, Attachment 33, and responded directly into the C.C.A.. Unfortunately Relator's evidence was insufficient to make his case. He has been hyper-diligent in his pleadings, Attachment 34: compressed pleadings.

All-in-all, this Court should agree that: 1) Relator filed constitutionally defined IAC habeas claims; 2) Mr. Shell responded with a false affidavit; 3) such a submission constitutes an admission by Mr. Shell to the claimed IAC; 4) thus, Relator is a victim of federally protected effective IAC ⁸, a Sixth Amendment violation and its symbiotic due process ⁹, a Fourteenth Amendment violation.

⁸ Evitts V. Lucey, 1985 U.S. LEXIS 42 ("... a criminal trial is thus not conducted in accord with due process of law unless the defendant, ****17,, has counsel to represent him." See McMann V. Richardson, 397 U.S. 759,771 n.14 (1970) ("It's long been recognized that the right to counsel is the right to effective counsel."); Cuyler V. Sullivan, 466 U.S. 335,344 (1980).

⁹ Gideon V. Weinwright, 372 U.S. 335,340 (1963) (The Sixth Amendment right to counsel [is] so fundamental and essential to a fair trial, and so, to due process of law, that its made obligatory upon states by the Fourteenth Amendment.").

X. PRAYER AND RELIEF SOUGHT

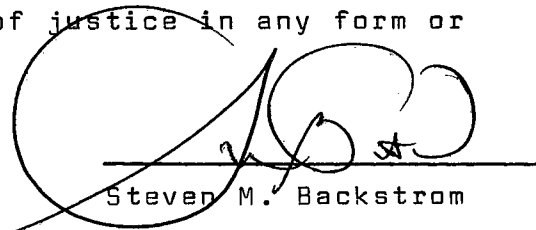
WHEREFORE, PREMISE CONSIDERED, Relator prays the Court will revisit its current stance regarding postconviction proceedings and render a "case-by-case" opinion, altering the future of federal habeas and/or 60(b) review.

Relator further prays the Court will remand this matter to the U.S. District Court, Austin, Texas for a hearing to certify Relator's evidence and its impact, if any, and order the District Court to act in accordance to its findings.

SO PRAYED this 2ND day of May, 2024..

XI. INMATE DECLARATION

Pursuant to 28 U.S.C. § 1746, Relator avers that he is Texas inmate #1657938, currently residing at the Clements Unit, 9601 Spur 591, Amarillo, Potter County, Texas 79107. He further avers that the facts and evidence herein are of Relator's personal knowledge and based on that knowledge are true and correct. He further avers that this pleading is not advanced wantonly, vexatiously, or to circumvent the administration of justice in any form or fashion.



Steven M. Backstrom
TDCJ #1657938

Respectfully submitted,



Steven M. Backstrom

TDCJ #1657938
9601 Spur 591
Amarillo, TX
79107

NO.: _____

IN THE
SUPREME COURT OF THE
UNITED STATES

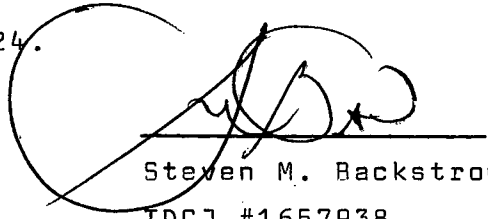
IN RE

STEVEN MICHAEL BACKSTROM,
RELATOR

PROOF OF SERVICE

I, STEVEN MICHAEL BACKSTROM, TDCJ #1657938, do swear under pain and penalty of perjury that I have served a true and correct copy of this amended petition for writ of habeas corpus upon the Office Of The Attotney general for the State of Texas at P.O. Box 12548, Austin, Texas 78711, by and through the Clements Unit law library on this 2nd day of May, 2014.

EXECUTED this 2nd day of May, 2024.



Steven M. Backstrom
TDCJ #1657938

April 29, 2024

CLERK OF THE COURT
U.S. Supreme Court
Washington, DC
20543

RE: IN RE STEVEN BACKSTROM/ Amended Petition

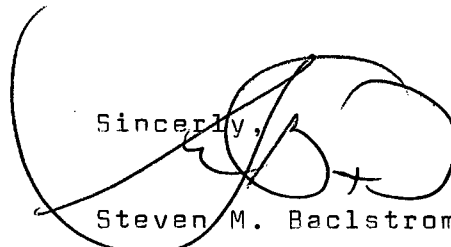
Dear Honorable Clerk:

Good day. Please find the enclosed amended writ of habeas corpus petition. I noticed that you sent me a cover page for a writ of habeas corpus but there was no "application" typical of a writ of certiorari. This unit has no such application so if this is a problem, I apologize in advance.

Should all be good, please file and present the writ and present it to the Court. Thank you.

With warm and sincere regards.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Backstrom', is written over the word 'Sincerely,' and the name 'Steven M. Backstrom'.

Steven M. Backstrom

TDCJ #1657938

9601 Spur 591

Amarillo, TX

79107