

23-7468

No. _____

FILED

APR 29 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Joe Robinson — PETITIONER
(Your Name)

vs.

State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joe Robinson #2250481
(Your Name)

George Beto Unit
1391 FM 3328
(Address)

Tennessee Colony, TX 75880
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Can a defendant be convicted of a law that has been held unconstitutional.
2. Can an attorney be ineffective for not adequately representing their client.
3. Can a trial court forward a writ of habeas corpus to the Texas Court of Criminal Appeals without any judgment (i.e. denial, dismissal, etc.).

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

1. Hughtt v. State of Texas, 583 S.W. 3d. 623 (Tex. Crim. App. 2019)
2. Walker v. State of Texas, 594 S.W. 3d. 330 (Tex. Crim. App. 2020)
3. Nicholson v. State of Texas, 682 S.W. 3d. 238 (Tex. Crim. App. 2024)
4. Montgomery v. Louisiana, 577 U.S. 190 (U.S.S.C. 2016)
5. U.S. v. Sanchez, 86 F. 4th 680 (5th Cir. 2023)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A — Post Card Enclosed (1/25/2024) WR-26,228-07
Writ of Habeas Corpus Received

APPENDIX B — Post Card Enclosed (2/7/2024) WR-26,228-07

Texas Court of Criminal Appeals dismissed without written order

APPENDIX C — Post Card Enclosed (2/28/2024) WR-26,228-07

Motion for Reconsideration/Rehearing dismissed

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

1) <u>Hughitt v. State</u>	5
2) <u>Walker v. State</u>	5
3) <u>Nicholson v. State</u>	5
4) <u>U.S. v. Sanchez</u>	5
5) <u>Montgomery v. Louisiana</u>	5

STATUTES AND RULES

1. Tex. Code of Crim. Proc. Art. 21.01	3
2. Tex. Health and Safety Code sec. 481.002	3
3. Tex. Health and Safety Code sec. 481.112	3
4. Tex. Penal Code sec. 7.01	3
5. Tex. Penal Code sec. 7.02	3
6. Tex. Penal Code sec. 71.02	3
7. Tex. Criminal Practice Guide @ 121.05	3

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 _____ 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 _____ 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 _____ 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 _____ court appears at Appendix _____ 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 _____.

☐ 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 2/7/2024.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: 2/28/2024, 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

- 1). Tex. Code of Criminal Procedure art. 21.01. "Indictment"
- 2). Tex. Health and Safety Code sec. 481.002 "Definitions"
- 3). Tex. Health and Safety Code sec. 481.112 "Offense 481.112 - Manufacture or Delivng of Substance in Penalty Group 1."
- 4). Texas Penal Code sec. 7.01 "Parties to Offenses"
- 5). Texas Penal Code Sec. 7.02 "Criminal Responsibility for Conduct of Another."
- 6). Texas Penal Code sec. 71.02 "Engaging in Organized Criminal Activity."
- 7). Texas Criminal Practice Guide § 121.05

STATEMENT OF THE CASE

Petitioner was charged and convicted of Engaging in Organized Criminal Activity -- Manufacturing/Delivery of a Controlled Substance with intent to deliver a controlled substance.

Petitioner was coerced to plea guilty within (60) sixty days after indictment by his court appointed counsel. Within the same year, the Texas Court of Criminal Appeals held Engaging in Organized Criminal Activity by way of Manufacturing/Delivery of a controlled substance with Intent to Deliver a Controlled Substance was held unconstitutional.

Petitioner filed a Writ of Habeas Corpus which was filed in the trial court of Jackson County, Texas. Without any order (i.e. denial, dismissal, etc.), the trial court forwarded said Writ to Texas Court of Criminal Appeals. Said Court dismissed petitioner's Writ of Habeas Corpus without any written order.

REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals stated in Hughitt v. State, 583 S.W. 3d. 623 (Tex. Crim. App. 2019), Engaging in Organized Criminal Activity with Manufacturing/Delivering with the Intent to Deliver was held unconstitutional stating in its opinion: "Possession with intent to deliver is not a valid predicate under Section 71.02(a) of the Penal Code because the plain meaning of 'manufacture, delivery' requires more than 'possession with intent to deliver.' Therefore, we agree with the court of appeals that the indictment in this case failed to allege an offense under engaging statute. We affirm the judgment of the court of appeals vacating Hughitt's conviction for engaging and dismissing the indictment..." Other cases that dealt with the same predicate followed suit: Walker v. State, 594 S.W. 3d. 330 (Tex. Crim. App. 2020); Nicholson v. State, 682 S.W. 3d. 238 (Tex. Crim. App. 2024); (and being convicted under an unconstitutional statute held the conviction void and indictment dismissed); U.S. v. Sanchez, 86 F. 4th 680 (5th Cir 2023); Montgomery v. Louisiana, 577 U.S. 190 (U.S. S.C. 2016). The only difference between the petitioner and Hughitt is the name. Petitioner was convicted under an illegal indictment and statute.

Wherefore, the petitioner prays this Honorable and
Prestigious Court would order the lower court of
Texas Court of Criminal Appeals to vacate his
conviction and dismiss the indictment and
conviction for violation of the Funding in Hughitt.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joe Rolon

Date: April 29th, 2024