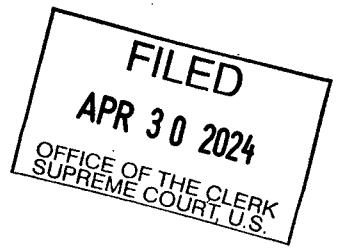


No. 23 - 7488



IN THE  
SUPREME COURT OF THE UNITED STATES

Jose Eliso Zavala — PETITIONER  
(Your Name)

vs.

The 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

Jose Eliso Zavala

(Your Name) No. #02413030  
John M. Wynne State Farm  
810 FM 2821, West Hwy. 75, N.

(Address)

Huntsville, Texas. 77349-0005

(City, State, Zip Code)

(936) 295-9126

(Phone Number)

✓

## QUESTION(S) PRESENTED

### QUESTION No. 1

WHETHER OR NOT THE PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL TRIAL UNDER THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE TWO (2) JURORS WERE SEATED OVER THE PETITIONER'S OBJECTIONS AND CHALLENGE FOR CAUSE WHO EXHIBITED AN ACTUAL AND PREJUDICIAL BIAS ON AN ISSUE OF LAW THAT WAS RELATED TO THE PETITIONER AND THE OFFENSE FOR WHICH THE PETITIONER WAS CHARGED AND ACCUSED OF HAVING COMMITTED?

### QUESTION No. 2

DID THE STATE APPELLATE COURT ERROR AND ABUSE ITS DISCRETION IN AFFIRMING THE JUDGMENT & SENTENCE OF CONVICTION AGAINST THE PETITIONER ON THE DETERMINATION THAT THE RECORD DID NOT SHOW THAT THE PETITIONER WAS NOT TRIED BY A FAIR AND IMPARTIAL JURY OR THAT ANY SPECIFIC JUROR WAS POISONED BY THE IMPROPER COMMITMENT QUESTION WHEN THE RECORD CLEARLY ESTABLISHED THAT EVEN IN THE ABSENCE OF THE IMPROPER COMMITMENT QUESTION TWO (2) JURORS WHO EXHIBITED AN ACTUAL BIAS AND PREJUDICE AGAINST THE PETITIONER AND OFFENSE FOR WHICH THE PETITIONER WAS CHARGED?

### QUESTION No. 3

WHETHER AN IMPROPER COMMITMENT QUESTION IS SUBJECT TO THE HARMLESS ERROR ANALYSIS WHEN THE PRESENCE OF A BIASED JUROR IS A STRUCTURAL ERROR THAT IS NOT SUBJECT TO THE HARMLESS ERROR ANALYSIS?

## 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: The State of Texas, C/O: Mark W. Snider, District Attorney, Hansford County, P.O. Box 3431, Stinnett, Texas, 79083:

Erin Mulanax, Attorney At Law, 7420 Golden Pond Plaza, Ste. #600, Amarillo, Texas, 79121; Petitioner's attorney on appeal.

## RELATED CASES

Jose Eliso Zavala v. The State of Texas, Case No. #07-22-00280-CR, Before The Seventh Court of Appeals for The State of Texas, At Amarillo, Texas. Judgment & Sentence of Conviction affirmed on September 29, 2023.

In re Jose Eliso Zavala, Case No. #PD-0787-23, Before The Texas Court of Criminal Appeals, At Austin, Texas; Petition for Discretionary Review refused on January 31, 2024.

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APPENDIX B: The Unpublished Written Opinion of the Seventh Court of Appeals for The State of Texas delivered on September 29, 2023, in Case No. #07-22-00280-CR, Styled: Jose Eliso Zavala v. State of Texas.

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### 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 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 Seventh Court of Appeals for The State of Texas, 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.

## 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\_\_\_\_\_.  
S

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 01/31/2024.  
A copy of that decision appears at Appendix A.

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\_\_\_\_\_.  
S

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Constitution;

6TH Amendment (Rights of The Accused): In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations, to be confronted with the witnessess against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution;

14TH Amendment, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

Petitioner was convicted before the 84TH Judicial District Court of Hansford County, Texas, in Case No. #CR-01789, Styled: The State of Texas v. Jose Eliso Zavala, for the alleged offense of Aggravated Sexual Assault.

Appeal was taken to the Seventh Court of Appeals for The State of Texas, in Case No. #07-22-00280-CR, Styled: Jose Eliso Zavala v. The State of Texas. The court of appeals affirmed the Judgment & Sentence of the trial court on September 29, 2023. (Appendix B). Petitioner sought review of the decision delivered by the court of appeals with the Texas Court of Criminal Appeals. The Court of Criminal Appeals denied the Petitioner's Petition for Discretionary Review on January 31, 2024, in Case No. #PD-0787-23, Styled: In re Jose Eliso Zavala. (Appendix A).

Before the court of appeals, Petitioner argued that the trial court erred in permitting the State to ask improper commitment questions to the jury panel and in refusing to strike potential jurors who changed their answer. (Appendix B). Specifically, as addressed by the court of appeals, Petitioner claimed that the trial court abused its discretion by not striking Jurors Reid and Gibson after they changed their answers to an improper commitment question asked by the prosecutor, and that the error was harmful. The court of appeals agreed that the question was improper, however, it was not harmful.

During the Voir Dire Examination, trial counsel asked the question of whether the prospective jurors could consider Community Supervision. Juror Close responded, that she could not if the Petitioner was found guilty, and Juror Reid answered, probabiy

not, and Juror Gibson answered No. (Appendix B).

Prior to the Voir Dire Examination by the parties, the Jury Venire was informed by the trial court that it was an aggravated sexual assault case of a child under the age of fourteen.

After the respective answers were made by Jurors Close, Reid, and Gibson, the trial court interjected: "I want to be sure that, for everyone who said there is no way they could consider probation whatsoever... if you had a sixteen-year-old and a twenty-year-old, you understand that would - even if it was a consensual act, that could mandate that there's no way you could give that person probation... So I just want to be sure everyone, when they said, "No, I can't go with probation," that you're saying there is absolutely no scenario whatsoever... where probation would be eligible."

After the trial court's interjection, the prosecutor offered a different scenario and asked the Jury Venire if they could consider Community Supervision for a conviction involving a twenty-year-old girl and a sixteen-year-old boy. Juror Close responded, yes, that she could; Juror Reid answered possibly; and Juror Gibson answered that she could. All three (3) of the jurors changed their answer under the new fact scenario.

After the jurors repetitive responses to the prosecution's scenario, trial counsel suggested to the trial court that the prosecutor had asked a commitment question as to a specific set of facts. The trial court responded, that trial counsel had a point. Trial counsel then voiced an objection, and argued

that the Petitioner would suffer irreparable harm if the jurors who had earlier said that they could not consider Community Supervision were allowed to be seated on the jury, and requested that they be struck for cause. The trial court suggested that the prosecutor rehabilitate the jurors as a group. However, the trial court announced that it would deny trial counsel's request, and added that there will be no more commitment questions. The trial court announced that the Petitioner's challenges for cause as it pertained to the jurors Reid, Gibson, and Close were denied, and Reid and Gibson were seated on the jury. Juror Close was not seated.

The court of appeals reviewed the error as one of non-constitutional magnitude and for harm. The court of appeals held, that it was to focus on whether a biased juror, one who had explicitly or implicitly promised to prejudge some aspect of the case before the State's improper questioning actually sat on the jury. (Appendix B). However, the court of appeals limited it's review to whether any specific juror was poisoned by the improper commitment question on a legal issue or fact that was important to the determination of the verdict or sentence. In addressing and concluding that the Petitioner was not harmed, the court of appeals alluded to the matter that the Petitioner was convicted of Aggravated Sexual Assault of A Child, and as such, he was not eligible for Community Supervision, and the record did not establish that the Petitioner was tried by an impartial jury, or that any specific juror was poisoned by the improper commitment question, as it was concluded that the sentence imposed by the jury was not substantially affected.

by the improper commitment question, nor harmed by it.

Before the Court of Criminal Appeals, Petitioner argued that (1) the court of appeals erred in its decision because the matter of an improper commitment question was of constitutional magnitude not subject to the harmless analysis; (2) the court of appeals erred in its conclusion that the record did not establish that the Petitioner was tried by an impartial jury when two (2) jurors sat on the jury that exhibited actual bias upon an issue of law; and (3) the court of appeals erred in its decision that the Petitioner was not deprived of a fair and impartial trial when the record clearly demonstrated that the jurors exhibited an actual bias upon an issue of law in reference to the offense charged before the improper commitment question.

Specifically, Petitioner argued that the error with respect to the improper commitment question was of constitutional magnitude not subject to the harmless analysis, because it did not involve trial error, but was error of a structural defect affecting the framework within which the trial was to proceed; and regardless of whether "he" was not eligible for Community Supervision, the jurors were not aware of this fact and exhibited actual bias towards an issue of law in reference to the offense for which the Petitioner was accused, prior to the improper commitment question. Petitioner argued that the improper commitment question had no bearing on the jurors bias on the matter of receiving probation and the offense charged, because such bias was exhibited prior to the improper commitment question.

## REASONS FOR GRANTING THE PETITION

In accordance with Rule 10 of the Supreme Court Rules, review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly state rule of law.

Petitioner argues that pursuant to Rule 10(c) of the Supreme Court Rules, that review should be granted in this case, because the State court has decided an important question of federal law that has not been, but should be, settled by this Court

Petitioner further argues, that in the interest of justice and jurisprudence thereof, judicial precedent from this Court in the area of "juror bias" is sparse, and the issue of whether or not juror bias is subject to the harm-less analysis is a novel question that should be answered by this Court.

There is judicial precedent from this Court of which establishes that a bias juror may be dismissed without offending the United States Constitution, but it is not known precisely what it means for a juror to be bias? There is nothing in the United States Constitution that lays down a particular test for juror bias.

However, it is known that a juror is bias if he or she is unwilling to follow the law. *Wainwright v. Witt*, 105 S.Ct. 844 (1985); a juror lacking impartiality may be excused as bias and defining an impartial juror as one who will conscientiously apply

the law. Cf., Irvin v. Dowd, 81 S.Ct. 1639 (1961); defining an impartial juror as one who can lay aside his or her impression or opinion and render a verdict based on the evidence.

It is assertive that a criminal defendant has the right to a trial by an impartial jury, secured by the 6TH & 14TH Amendments to the United States Constitution. Ducan v. Louisiana, 88 S.Ct. 1444 (1968). A juror must be excluded, "if his or her views would prevent or substantially impair the performance of his or her duties as a juror in accordance with his or her instructions and his oath." If, a potential juror show "actual prejudice," the court must grant a challenge for cause. However, any claim of jury impartiality must focus on the jurors who ultimately sat. Ross v. Oklahoma, 108 S.Ct. 1758 (1988). The right to a fair and impartial trial for a criminal defendant begins with the Voir Dire Examination, that serves the dual purpose of enabling the selection of an impartial jury and assisting counsel in exercising Peremptory Challenges.

The failure to remove a bias juror taints the entire trial process. The seating of a biased juror, who should have been dismissed for cause requires reversal of the conviction. U.S. v. Martinez-Salazar, 120 S.Ct. 774 (2000).

Before the Texas Court of Criminal Appeals, the Petitioner's argument focused on the court of appeals determination that the record did not establish that the Petitioner ~~was~~ tried by an impartial jury or that any specific juror was poisoned by the improper commitment question, and the court of appeals conclusion

that the sentence imposed by the jury was not substantially affected by the improper commitment question. This was based on three (3) areas of error committed by the court of appeals in the disposition of the case, in that (1) the court of appeals erred in its decision because the matter of the improper commitment question was of constitutional magnitude not subject to the harmless analysis, (2) the court of appeals erred in its conclusion that the record did not establish that the Petitioner was tried by an impartial jury when two (2) jurors seated on the jury exhibited actual bias upon an issue of law, and (3) the court of appeals erred in its decision that the Petitioner was not deprived of a fair and impartial trial when the record clearly demonstrated that the jurors exhibited an actual bias upon an issue of law in reference to the offense charged, before the improper commitment question.

It is the productivity, that by the Texas Court of Criminal Appeals refusal to grant review in this case, it found that the court of appeals did not error in this determination and conclusions.

It is noteworthy, that prior to the improper commitment question, Jurors Reid, Gibson, and Close clearly stated that they could not consider probation, that must be gleemed from the fact that they were informed of the nature of the offense. Although, it was the inclination of the trial court to rehabilitate the jurors, the attempt lead to the improper commitment question. However, Jurors Reid, Gibson, and Close had already demonstrated an actual bias or prejudicial outlook on an issue of law due to the nature of the offense for which the Petitioner was charged. The court

of appeals did not thoroughly look at this matter from the initiating state of the error.

In light of the court of appeals assessment, the matter presented to the Court of Criminal Appeals was that the "Improper Comittment Question" was an error of constitutional magnitued not subject to the harmless-error analysis under this Court's precedents delivered in *Arizona v. Fulminante*, 111 S.Ct. 1246 (1991), because the error did not involve a matter of trial error, but was error of a structural defect affecting the framework within which the trial proceeded.

On this matter, the Sixth Circuit Court of Appeals has held that the presence of a biased juror is a "structural error" not subject to the harmless-error analysis. *Hughes v. U.S.*, 258 F.3d 453, 463 (6th Cir. 2001). Cf., *Johnson v. Amontrout*, 961 F.2d 748 (8th Cir. 1992); stating that trying a defendant before a biased jury is akin to providing him no trial at alw. It constitutes a fundamental defect in the trial mechanism itself. In *Hughes*, the juror said, "I don't think I could be fair," in a case where the defendant was said to have stolen a firearm from a federal marshal at gunpoint. The court held that the juror's assessment of her own fairness was based on her close relationship with members of the police force. The court found these statements to be evidence of bias.

In this case, the trial court or the State made no effort to rehabilitate the jurors or to pursue the matter further, thus, the record clearly demonstrates that the jurors were bias. The

Petitioner's trial counsel specifically challenged the jurors for cause, that was denied by the trial court. It was the trial court's duty to remove the bias and prejudicial jurors, however, two (2) of the jurors were allowed to be seated on the jury.

Therefore, this Court should grant review to determine and set precedent as to whether the product of an improper commitment question is subject to the harmless-error analysis, when used in the attempt to rehabilitate prospective jurors.

The court of appeals viewed the matter, because the Petitioner was not eligible for probation, therefore, the Petitioner was not harmed, however, the court of appeals did not take into consideration that the jurors who were seated on the jury exhibited a bias and prejudice towards the Petitioner on the basis of the offense that was charged and fact, that the jurors were never informed of the fact that the Petitioner was not eligible for probation.

It was of probative value, that the jurors were reluctant to follow the law on a legal issue in regards to the offense charged...

Therefore, this Court should grant review to determine whether or not the Petitioner was deprived of his rights to a fair and impartial trial, because the record reflects that the jurors who sat on the jury were actually bias and prejudice. This Court should take the time to lay down a particular test for jury bias to be followed by the Courts of the United States.

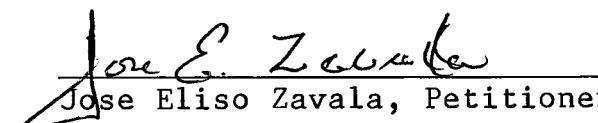
The failure to remove the bias and prejudicial jurors tainted the entire trial process, and the seating of the bias jurors, who should have been dismissed for cause clearly requires the

reversal of the Petitioner's conviction and the intervention of this Court's supervisory authority in the performance of the fair administration of justice. U.S. v. Martinez-Salazar, 120 S.Ct. 774 (2000).

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Jose Eliso Zavala, Petitioner, In propria persona.  
Date: April 17, 2024