

No. _____

23-7647

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAY 28, 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MICHAEL FRED HOUSTON — PETITIONER
(Your Name)

VS.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF CRIMINAL APPEALS OF TEXAS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL FRED HOUSTON
(Your Name)

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(Phone Number)

QUESTION(S) PRESENTED

1. Is a defendant constitutionally entitled to the appointment of counsel in initial-review collateral proceedings?
2. Can a State assert a procedural default in a successive collateral proceeding when it failed to appoint a defendant counsel in an initial-review collateral proceeding?
3. Is a State required to consider claims on the merits in a successive collateral proceeding when it failed to appoint a defendant counsel in an initial-review collateral proceeding?

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

- * Ex parte Michael Fred Houston, WR-93,023-03 (Tex. Crim. App. April 1, 2024).
- * Houston v. Dir., Tex. Dep't of Crim. Just.-Corr. Insts. Div., 6:22-CV-00293 (E.D. Tex. January 3, 2024).
- * Ex parte Michael Fred Houston, WR-93,023-01 (Tex. Crim. App. September 22, 2021).
- * Houston v. Texas, 141 S.Ct. 562 (2020).
- * Houston v. State, PD-0126-20 (Tex. Crim. App. March 11, 2020).
- * Houston v. State, 06-19-00091-CR (Tex. App.-Texarkana January 10, 2020).
- * State v. Houston, 46857-B, (124th Dist. Ct., Gregg County, Tex. April 19, 2019).

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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[] is unpublished.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.

[x] For cases from state courts:

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

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] 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,
[x] 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).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was 1/31/2024.
A copy of that decision appears at Appendix B.

[x] A timely petition for rehearing was thereafter denied on the following date: 4/01/2024, and a copy of the order denying rehearing appears at Appendix A.

[] 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

The Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense."

The Fourteenth Amendment to the United States Constitution provides that "No state shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws."

Texas Code of Criminal Procedure, Article 11.07 § 4(a) provides that "If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application or by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt."

STATEMENT OF THE CASE

On April 19, 2019, Houston was found guilty by a jury of Aggravated Robbery and sentenced to life imprisonment. His appeal was affirmed on January 10, 2020. His Petition for Discretionary Review was refused on March 11, 2020. This Court denied his Certiorari on October 13, 2020.

Houston's application in his initial state habeas corpus collateral proceeding was denied on September 22, 2021. This was his initial-review collateral proceeding for claims of ineffective assistance of trial and appellate counsel. He requested the appointment of counsel in this proceeding, but counsel was not provided.

Houston submitted a subsequent application for a writ of habeas corpus, which was dismissed on January 31, 2024 as procedurally barred by Texas Code of Criminal Procedure, Article 11.07 § 4(a)-(c). Houston also requested in this proceeding, but counsel was not provided. Houston filed his suggestion for reconsideration, which was denied on April 1, 2024.

REASONS FOR GRANTING THE PETITION

The questions presented are important, affect many persons, recur frequently, and are perfectly presented on this record. This Court should grant certiorari to settle the constitutional questions involved.

- I. This Court should grant Certiorari to determine whether a defendant is entitled to the appointment of counsel in initial-review collateral proceedings.

This Court held in Douglas v. California, 372 U.S. 353 (1963), that a defendant has a constitutional right to counsel on appeal. The Court further held in Griffin v. Illinois, 351 U.S. 12 (1956), that an indigent defendant has a constitutional right to a free transcript on appeal. In Martinez v. Ryan, 132 S.Ct. 1309 (2012), the Court held that counsel can be ineffective in causing a procedural default in an initial-review habeas corpus proceeding, and that a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective. This Court held in Trevino v. Thaler, 569 U.S. 413 (2013), that Martinez applies in Texas.

Houston presented several claims that were the initial-review in his state habeas corpus proceeding. He requested the appointment of counsel for this proceeding, but was not provided counsel.

In his successive state habeas corpus proceeding, Houston argued that the state court should consider the merits of the claims because he was not afforded counsel in his initial habeas proceeding and that if a federal court could consider for the first time

a claim of ineffective assistance of trial counsel that was not presented to the state habeas court then so could a subordinate court. The Court of Criminal Appeals of Texas dismissed the habeas corpus application and denied the suggestion for reconsideration.

Where, as here, the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim. Martinez, at 1317. Therefore, Houston contends that the United States Constitution requires the appointment of counsel for initial-review collateral proceedings.

II. This Court should grant Certiorari to determine whether a state court can assert a procedural default in a successive collateral proceeding when it failed to appoint a defendant counsel in an initial-review collateral proceeding.

In Martinez, this Court held that "Where, under state law, claims of ineffective assistance of trial counsel had to be raised in an initial-review collateral proceeding, a procedural default would not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." Martinez, at 1320. However, in Coleman v. Thompson, 501 U.S. 722 (1991), the Court left open the constitutional question as to whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial.

Houston asserts that when the Court held that counsel could be found ineffective in an initial-review collateral proceeding, it essentially decided that a defendant has a right to counsel in that proceeding. See Martinez. How else could counsel be ineffec-

tive if there was no right to counsel to begin with?

Texas Code of Criminal Procedure, Article 11.07 § 4 procedurally bars a subsequent application for a writ of habeas corpus unless the claims therein have not been and could not have been presented in a previously considered application or by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt. TEX. CODE CRIM. PROC., art. 11.07 § 4. This statute does not take into consideration as to whether a defendant was afforded counsel in the initial-review collateral proceeding.

In the case at bar, Houston requested the appointment of counsel in his original habeas corpus application. The state court chose not to appoint him counsel.

For these reasons, Houston argues that a state court should be precluded from asserting a procedural default in such circumstances.

III. This Court should grant Certiorari to determine whether a state court is required to consider claims on the merits in a successive collateral proceeding when it failed to appoint a defendant counsel in an initial-review collateral proceeding.

Houston refers to an incorporates herein the above case law and statute for all purposes. In addition, he submits that if a federal court can consider a state procedurally defaulted claim then so should a state court in a successive collateral proceeding.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Houston
MICHAEL FRED HOUSTON
PETITIONER
Date: May 17, 2024