

23-7739

ORIGINAL

FILED

MAY 31 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CARY JOSEPH HEATH — PETITIONER
(Your Name)

VS.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

CARY JOSEPH HEATH 02282518
(Your Name)

MICHAEL UNIT, 2667 FM 2054
(Address)

TENNESSEE COLONY, TX 75886
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) PETITIONER WAS DRUGGED AT A PARTY BY HIS NEIGHBOR. THE PETITIONER WAS NOT CONSCIOUS OR AWARE OF HIS CONDUCT WHEN THE NEIGHBOR, ANDRES LICEA, DIRECTED HIM TO "DEFEND" AND STATED, "YOU HAVE ALL THOSE GUNS" BEFORE PETITIONER SHOT AND KILLED THE VICTIMS. IS HE, THE PETITIONER, THE LEGALLY RESPONSIBLE PARTY FOR THEIR DEATHS?
- 2) JOHN MATTHEW FABIAN, FORENSIC PSYCHOLOGIST, WAS HIRED TO EVALUATE THE PETITIONER FOR AN N.G.R.I., BUT WAS NOT CALLED TO TAKE THE STAND AT TRIAL. HIS TESTIMONY, AND ULTIMATE OPINION IS THAT THE PETITIONER WAS SLIPPED A DRUG, WAS FULLY OR PARTIALLY INTOXICATED AND THIS TESTIMONY WILL LEAD TO THE ACQUITTAL OF THE PETITIONER. HIS TESTIMONY WAS UNAVAILABLE AT TRIAL DUE TO A CLEAR ERROR. HE WAS HIRED TO TESTIFY AT SENTENCING AS A MITIGATING WITNESS, IN A CAPITAL MURDER TRIAL WITH NO DEATH PENALTY. THERE WAS NO SENTENCING. IS THIS INEFFECTIVE ASSISTANCE OF COUNSEL?
- 3) APPEAL COUNSEL FAILED TO USE JOHN FABIAN'S TESTIMONY AS GROUNDS FOR A NEW TRIAL. HE WAS AWARE OF THE EVALUATION AND CHOSE NOT TO USE NEW EVIDENCE AGAINST HIS CLIENT'S WISHES. DOES THIS NEGLECT CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL?
- 4) THE TRIAL COURT DENIED PETITIONER AN EVIDENTIARY HEARING FOR JOHN FABIAN TO TESTIFY ON THE RECORD. IS THIS DENIAL OF A HEARING JUDICIAL ABUSE OF DISCRETION?
- 5) THE COURT, THE STATE OF TEXAS, AND THE COURT APPOINTED ATTORNEYS FOR THE PETITIONER PREVENTED JOHN FABIAN'S EXCULPATORY EVIDENCE FROM MAKING THE RECORD. DOES THIS DENIAL OF DUE PROCESS CONSTITUTE A REVERSIBLE ERROR? DOES THIS TYPE OF COLLUSION CONSTITUTE A MIS-CARRIAGE OF JUSTICE? U.S. CONST. AMENDS 5, 6, AND 14.

QUESTION(S) PRESENTED
CONTINUED

- 6) THE STATE ^{DISMISSED} ~~DENIED~~ PETITIONER'S REQUEST FOR NEW TRIAL, BASED ON THE EXCULPATORY EVIDENCE IN JOHN FABIAN'S TESTIMONY, (FUTURE TESTIMONY), BECAUSE PETITIONER'S COURT APPOINTED ATTORNEY FAILED TO USE NEW EVIDENCE IN HIS MOTION FOR NEW TRIAL. IS THIS AN ERROR, AND IS THIS A VIOLATION OF DUE PROCESS?
- 7) DID THE COURT OF CRIMINAL APPEALS OF TEXAS ERROR BY NOT ~~HOLDING AN~~ ORDERING A NEW TRIAL ON THE EXCULPATORY EVIDENCE IN TRISTEN HEATH'S AFFIDAVIT AND FUTURE TESTIMONY? IS THIS A VIOLATION OF DUE PROCESS?
- 8) DID THE COURT OF ACRIMINAL APPEALS OF TEXAS ERROR BY NOT OVERTURNING PETITIONER'S CONVICTION BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL FAILURE TO INVESTIGATE INVOLUNTARY INTOXICATION?
- 9) CAN AND WILL THE SUPREME COURT HOLD AN EVIDENTIARY HEARING FOR JOHN MATTHEW FABIAN TO TESTIFY? FOR CARY HEATH TO TESTIFY? FOR TRISTEN HEATH TO TESTIFY?
- 10) BASED ON THE TESTIMONY, WILL THE SUPREME COURT VACATE THE PETITIONER'S CONVICTION?
- 11) THE STATE OF TEXAS IS WITHHOLDING BODY CAMERA FOOTAGE FROM THE PETITIONER, AND JOHN STICKELS HAS REFUSED TO PROVIDE FOOTAGE TO PETITIONER, AND SHOW FOOTAGE TO PETITIONER. IS THIS TYPE OF COLLUSION A BRADY ACT VIOLATION OR IS THIS A NEW TYPE OF VIOLATION? BODY CAMERA FOOTAGE WILL SHOW POLICE MISCONDUCT, PLANTED DNA.

QUESTIONS PRESENTED
CONTINUED - 2

- 12) A BLACK MAGAZINE FOR AN AR-15 RIFLE WAS IN THE GUNSAFE AT THE PETITIONER'S HOME, AT THE TIME OF THE INCIDENT IN QUESTION. IT HAD PETITIONER'S DNA, AND WAS CLAIMED BY PROSECUTORS TO BE FOUND AT THE SCENE OF THE INCIDENT, BODY CAMERA FOOTAGE WILL SHOW THAT THE MAGAZINE WAS NOT FOUND AT THE SCENE. THE FOOTAGE IS BEING WITHHELD FROM PETITIONER BY THE STATE AND BY TRIAL COUNSEL. IS THIS A VIOLATION OF DUE PROCESS? AND IS THIS INEFFECTIVE ASSISTANCE BY TRIAL COUNSEL FOR NOT CHALLENGING DNA EVIDENCE?
- 13) PETITIONER POSED HIS GROUND AS INEFFECTIVE ASSISTANCE OF COUNSEL, FAILURE TO INVESTIGATE INVOLUNTARY INTOXICATION, THOUGH, IT COULD HAVE BEEN HAVE BEEN POSED ... INVESTIGATE AND PRESENT / UTILIZE PSYCHOLOGICAL / PSYCHIATRIC INFORMATION AT TRIAL. *WEEDEN V. JOHNSON* 854 F.3d 1063 (9th CIR. 2017). *WEEDEN'S* CASE WAS OVERTURNED FOR THIS ERROR. DID THE STATE OF TEXAS ERROR BY NOT OVERTURNING PETITIONER'S CASE?
- 14) IT IS A VIOLATION OF DUE PROCESS TO CONVICT AN INNOCENT MAN, WITHOUT A FAIR TRIAL. U.S. CONST. AMEND. 5, THE PETITIONER'S TRIAL WAS NOT FAIR OR RELIABLE DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL, AND OTHER VIOLATIONS. *STRICKLAND V. WASHINGTON* 466 U.S. 668 (1984). WILL THE SUPREME COURT PLEASE HEAR MY PETITION?

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

STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984).
WEEBEN V. JOHNSON 854 F.3d 1063 (9th Cir. 2017).
TENNY V. COCKRELL, 420 SUPP. 2d 617
CANNEDY V. ADAMS, 706 F.3d 1148 (9th Cir. 2013).

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

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OTHER

N/A

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 COURT OF CRIMINAL APPEALS OF TEXAS 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.

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 4-27-2024.
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 ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PETITIONER IS ACTUALLY INNOCENT AND HIS INCARCERATION IS IN VIOLATION OF DUE PROCESS U.S. CONSTITUTIONAL AMENDMENT 5. HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF U.S. CONSTITUTIONAL AMENDMENT 6 AND 14. HE WAS ILLEGALLY SEARCHED UNDER THE NAME CARY JOESPH HEATH, IN VIOLATION OF U.S. CONST. AMEND. 4. STRICKLAND. V. WASHINGTON 466 U.S. 668 (1984). INEFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT OF THE CASE

PETITIONER'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED. CARY JOSEPH HEATH IS BEING HELD LEGALLY RESPONSIBLE FOR CAPITAL MURDER, DESPITE BEING INNOCENT DUE TO A LACK OF CULPABLE MENTAL STATE DUE TO INVOLUNTARY INTOXICATION. HIS NAME ON THE SEARCH WARRANT, INDICTMENT, AND OTHER COURT DOCUMENTS IS CARY JOESPH HEATH, AND CARY JOSEPH HEATH NOT HIS REAL NAME NOR HAS HE EVER GONE BY THOSE NAMES. HIS INCARCERATION IS THEREFORE INVALID. HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL. HE WAS CONVICTED WITH PLANTED EVIDENCE, PERJURED TESTIMONY, AND NO ESTABLISHED MOTIVE. HIS APPEAL COUNSEL WAS INEFFECTIVE, AND HE INTENTIONALLY FAILED TO USE NEWLY DISCOVERED EVIDENCE IN PETITIONER'S MOTION FOR NEW TRIAL. JOHN MATTHEW FABIAN'S TESTIMONY IS BEING BLOCKED FROM THE RECORD, AND IS EXCULPATORY.

REASONS FOR GRANTING THE PETITION

PETITIONER IS INNOCENT AND HIS RIGHTS WERE VIOLATED TO ENSURE HIS CONVICTION. PROSECUTORS KNOWINGLY ALLOWED ANDRES LICEA TO COMMIT PERJURY, PRESENTED PLANTED DNA EVIDENCE, AND POSSIBLY COLLUDED WITH TRIAL DEFENSE AND APPELLATE DEFENSE COUNSEL TO PREVENT JOHN MATTHEW FABIAN FROM TESTIFYING TO A JURY OR IN AN EVIDENTIARY HEARING. HIS CONVICTION IS IN VIOLATION OF AMENDMENTS 4, 5, 6, AND 14 OF THE UNITED STATES CONSTITUTION, STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), ACTUAL INNOCENCE DUE PROCESS, AND OTHERS.

CONCLUSION

PETITIONER IS ACTUALLY INNOCENT AND WAS
ILLEGALLY CONVICTED IN THE STATE OF TEXAS. ~~HIS~~
HIS CONVICTION SHOULD BE VACATED, OVERTURNED, REVERSED.
The petition for a writ of certiorari should be granted.

Respectfully submitted,

CZ US

Date: 5-7-2024