No. _____

In The

Supreme Court of the United States

JOSHUA ISAIAH JOYNER,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition For A Writ Of Certiorari To The Texas Court Of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

RANDOLPH L. SCHAFFER, JR.
Counsel of Record
1021 Main, Suite 1440
Houston, Texas 77002
(713) 951-9555
noguilt@schafferfirm.com
Counsel for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Petitioner, aged 15, and Albert Nelson, a marijuana dealer, shot each other during a marijuana transaction, and Nelson died. Petitioner was charged with capital murder and certified for trial as an adult. The State relied on the testimony of two juveniles who accompanied petitioner—neither of whom were charged—that petitioner shot Nelson during a robbery. Defense counsel presented no cogent theory of defense. Petitioner was convicted and sentenced to life imprisonment. Petitioner filed a habeas corpus application alleging that his trial counsel was ineffective, *inter alia*, by failing to raise self-defense and defense of a third person; that the State failed to disclose favorable impeachment evidence and presented false testimony; and, that the cumulative prejudice arising from these constitutional violations denied petitioner a fair trial. The trial court conducted an evidentiary hearing and made findings of fact that summarized the testimony but failed to resolve any disputed issues and did not conduct a meaningful prejudice/materiality analysis. The Texas Court of Criminal Appeals (TCCA) refused petitioner's request to remand the case to the trial court to resolve the disputed facts and denied relief without written order. The question presented is:

> Did the TCCA deny petitioner procedural due process by summarily rejecting his substantial constitutional claims without requiring the trial court to resolve the disputed facts?

RELATED CASES

- *State v. Joyner*, No. 2016-CR-3747, 386th District Court of Bexar County, Texas. Judgment entered October 30, 2016.
- *Joyner v. State*, No. 04-16-00677-CR, Fourth Court of Appeals of Texas. Judgment entered September 20, 2017.
- *Ex parte Joyner*, No. 2016-CR-3747-W1, 436th District Court of Bexar County, Texas. Judgment entered February 15, 2023.
- *Ex parte Joyner*, No. WR-93,359-01, Texas Court of Criminal Appeals. Judgment entered March 29, 2023. Reconsideration denied May 3, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Joshua Isaiah Joyner, respectfully petitions for a writ of certiorari to review the judgment of the TCCA.

OPINIONS BELOW

The TCCA's orders denying relief (App. 1) and reconsideration (App. 28) are unreported. The state district court's order (App. 2-17) and supplemental order (App. 18-27) are unreported.

JURISDICTION

The TCCA denied habeas corpus relief on March 29, 2023, and denied reconsideration on May 3, 2023. This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides, in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, "No State shall . . . deny any person of . . . liberty . . . without due process of law. . . ."

STATEMENT OF THE CASE

A. Procedural History

A juvenile court certified petitioner, aged 15 at the time of the offense, for trial as an adult for capital murder. He pled not guilty in the 386th District Court of Bexar County, Texas. A jury convicted him, and the court sentenced him to life imprisonment on October 30, 2016.

The Texas Court of Appeals affirmed petitioner's conviction in an unpublished opinion issued on September 20, 2017. He did not file a petition for discretionary review. *Joyner v. State*, No. 04-16-00677-CR, 2017 WL 4158086 (Tex. App.—San Antonio Sept. 20, 2017).

Petitioner filed a state habeas corpus application on June 1, 2021. The trial court initially recommended that relief be denied without having conducted an evidentiary hearing (App. 2-17). The TCCA remanded for an evidentiary hearing on September 7, 2022. The trial court conducted an evidentiary hearing and again recommended that relief be denied on February 15, 2023 (App. 18-27). The TCCA denied relief without written order on March 29, 2023 (App. 1). Petitioner filed a suggestion for reconsideration on April 12, 2023. The TCCA denied reconsideration on May 3, 2023 (App. 28). *Ex parte Joyner*, No. WR-93,359-01 (Tex. Crim. App. March 29, 2023), *reconsideration denied* (Tex. Crim. App. May 3, 2023).

B. Factual Statement

1. The Trial

The indictment alleged that petitioner intentionally and knowingly caused the death of Albert Nelson by shooting him with a firearm during the commission or attempted commission of a robbery (C.R. 22).[1]

Dimitri Eaglin testified that he and his 19-year-old brother, Albert Nelson, were standing in front of their home on July 24, 2015, when petitioner and another boy walked past them and petitioner said, "Looks like that will get you shot" (7 R.R. 20-22, 28-29). Eaglin did not take the remark seriously (7 R.R. 29). Later that morning, Nelson told Eaglin that he was going to the elementary school, which Eaglin understood to mean that he was going to "handle some business" (7 R.R. 30).

Quincy Byrd, aged 15, testified that Nelson spoke to petitioner and him as they walked down the street, and petitioner responded (8 R.R. 20, 23-24). They went to Elisha Evans' home (8 R.R. 25).

Evans, aged 16, testified that he, Jaren Cunningham, and Justo DeJesus were at his home when petitioner and Byrd arrived and said that they had just argued with Nelson (7 R.R. 36, 39-40). According to Evans, petitioner said that they were going to rob Nelson

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[1] "C.R." refers to the Clerk's Record and "R.R." refers to the Reporter's Record of the trial. "H.C.R." refers to the Clerk's Record and "H.R.R." refers to the Reporter's Record of the habeas corpus proceeding.

and "shoot his ass" (7 R.R. 40-41, 45). Petitioner told Evans to call Nelson to arrange to buy marijuana so Evans could steal the marijuana and run away (7 R.R. 41, 46-47). Evans called Nelson, said that he wanted to buy seven grams, and arranged to meet in front of a nearby school (7 R.R. 47-48).

Evans testified that they walked to the school and jumped over the back fence (7 R.R. 48-49). Evans and petitioner walked to the front of the school (7 R.R. 49). Nelson drove up and parked (7 R.R. 50). Evans asked to see the marijuana so he could smell it (7 R.R. 50, 52). Nelson held out the bag; Evans grabbed it but let go when he saw Nelson reach for what appeared to be a gun (7 R.R. 50). As Nelson pulled the gun, petitioner approached, pointed a Glock, and said, "I'm going to shoot your ass" (7 R.R. 55-56, 58). Nelson and petitioner then shot each other (7 R.R. 58). Evans and petitioner fled on foot, and Nelson drove away (7 R.R. 60).

The other boys, who were at the back of the school, heard the gunshots and ran (8 R.R. 42; 9 R.R. 109, 111, 137; 10 R.R. 27). DeJesus testified that he saw that petitioner had been shot and told petitioner to wrap his arm to stop the bleeding (10 R.R. 27). Cunningham testified that petitioner asked for his shirt and wrapped the gun in it (9 R.R. 113-14). Evans left the boys and went home (7 R.R. 66). The police arrested Cunningham and DeJesus in the backyard of a nearby home (9 R.R. 119-20; 10 R.R. 29).

Nelson drove home but died before he could exit his car (7 R.R. 32). Eaglin called 9-1-1 (7 R.R. 32-33).

Officers arrived and found a .38 Taurus revolver with one spent cartridge on the driver's floorboard and a bag of marijuana on the passenger's seat (8 R.R. 79, 81-82). Officers found a spent shell casing on the sidewalk in front of the school and a .40 caliber Glock under a shirt in a culvert near the school (7 R.R. 116-17; 9 R.R. 21). A firearms examiner testified that the Glock fired the spent shell casing found in front of the school, and the Taurus fired the spent cartridge found in the car (9 R.R. 65; 10 R.R. 93, 99-102).

Detective Kevin Hodgkinson testified that he spoke to petitioner at the hospital in the presence of petitioner's father (8 R.R. 112, 116). Petitioner said that he had been shot in a drive-by shooting while playing basketball (8 R.R. 118). Hodgkinson asked him to tell the truth, and he admitted that he was shot as he approached a car during a drug deal (8 R.R. 119-21).

Petitioner went to the police station and made a written statement in the presence of his father (8 R.R. 121, 127). He said that Evans met a man at the school to buy marijuana, asked to smell it, and gave it back; and, when petitioner approached the car, the man reached under the seat, pulled out a revolver, and shot him in the shoulder (8 R.R. 128-29). Petitioner ran away, told DeJesus to call his father, and went to the hospital (8 R.R. 129-30).

Evans and DeJesus testified that all five boys had agreed to the robbery (7 R.R. 81, 87; 10 R.R. 24-25, 34-35, 39-40, 43). Cunningham testified that he was not at Evans' home, did not hear any discussion about a

robbery or a shooting, and did not agree to participate (9 R.R. 131, 133-34). Byrd testified that they did not plan a robbery or a shooting (8 R.R. 57-59). Petitioner was the only person charged with a crime (7 R.R. 81; 8 R.R. 62; 9 R.R. 128; 10 R.R. 42). Evans, Byrd, Cunningham, and DeJesus testified that they had not been promised anything for their testimony but acknowledged that they did not want to be charged (7 R.R. 99; 8 R.R. 52; 9 R.R. 125-26, 142; 10 R.R. 37, 44).

Detective Ruben Arevalos testified that he interviewed the juveniles, reviewed the evidence, and concluded that petitioner had planned a robbery and a murder and intentionally killed Nelson during a robbery (10 R.R. 168, 176-77).

The prosecutors argued that petitioner lured Nelson to the school to rob and kill him because petitioner was mad at him (11 R.R. 31-32, 50); that petitioner approached the car as Nelson pointed a gun at Evans, shot Nelson, and ran away (11 R.R. 26-27); that Nelson had a right to shoot petitioner because petitioner pointed a gun at him (11 R.R. 48); that petitioner changed his story when he talked to the police and did not say that he had a gun and shot Nelson (11 R.R. 54-56); and, that the court's charge did not include an instruction on self-defense (11 R.R. 24).

Defense counsel, Mario Trevino, argued that the other juveniles were not being prosecuted and were lying (11 R.R. 41-46); that petitioner's prints were not

found on the Glock (11 R.R. 40);[2] and that, accepting the State's theory that petitioner shot Nelson because of a grudge, the offense committed was murder instead of capital murder (11 R.R. 35).[3] Trevino presented no cogent theory of defense.

The jury convicted petitioner of capital murder (C.R. 186).[4]

2. The State Habeas Corpus Proceeding

Petitioner filed a state habeas corpus application alleging that Trevino provided ineffective assistance; that the State failed to disclose favorable impeachment evidence and presented false testimony; and, that the cumulative prejudice and materiality arising from these constitutional violations denied petitioner a fair trial. The trial court initially recommended that relief be denied without having conducted an evidentiary hearing. The TCCA remanded for an evidentiary hearing. The trial court conducted the hearing and again recommended that relief be denied.

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[2] Trevino thereby suggested that petitioner did not shoot Nelson.

[3] Trevino ignored the testimony of Evans and DeJesus that the boys planned to rob Nelson.

[4] Petitioner rejected a plea bargain of 25 years for the lesser included offense of murder immediately before trial (5 R.R. 13-14).

a. Defense counsel failed to file a motion in limine, timely object, and preserve error in the admission of the lead detective's inadmissible opinion that petitioner was guilty of capital murder.

Petitioner alleged that Trevino performed deficiently by failing to preserve error when Detective Arevalos testified at trial that he concluded that petitioner put together a plan to lure "the victim" to the school "to rob him of the bag of weed" and failed to timely object when Arevalos testified to his opinion that petitioner intentionally caused Nelson's death during a robbery (10 R.R. 167-68, 176-77). Trevino testified at the habeas evidentiary hearing that he should have filed the motion in limine, timely objected, and preserved error for appeal (2 H.R.R. 67-70).

The state habeas trial court found that Trevino testified that he should have filed a motion in limine to exclude these opinions, should have requested an instruction to disregard to preserve error after the trial court sustained an objection to one answer, and should have objected to the detective's additional opinions (App. 21). Petitioner objected that the state habeas trial court failed to find whether Trevino performed deficiently and, if so, whether his errors probably contributed to the conviction (4 H.C.R. 48).

b. Detective Richard Mendez destroyed Justo DeJesus' prior inconsistent written statement, the State failed to disclose that statement to the defense, and defense counsel failed to impeach DeJesus with the inconsistencies in it.

DeJesus testified at trial that petitioner argued with Nelson, became angry, and decided to rob Nelson (10 R.R. 24-25, 34-35, 43). DeJesus provided the only corroboration of the testimony of Evans, an accomplice witness as a matter of law, that the shooting occurred during a robbery.[5]

DeJesus gave a recorded statement to petitioner's habeas counsel during the post-conviction investigation that he told a detective that the initial plan was to buy the marijuana; the detective printed out a statement to that effect and said that DeJesus would be charged as an accessory to capital murder if he signed it, as the detective knew that petitioner was going to rob Nelson; that DeJesus got scared and changed his story because the detective threatened him with prosecution; and, that DeJesus testified falsely at trial that

[5] A conviction based on the testimony of an accomplice witness cannot be upheld in Texas unless it is corroborated by independent evidence tending to connect the defendant with the offense. TEX. CRIM. PROC. CODE art. 38.14 (West 2022).

he heard petitioner tell Evans that they were going to rob Nelson (1 H.C.R. 73-83).[6]

Detective Mendez testified at the habeas evidentiary hearing that he printed out a paper copy of the statement for DeJesus to sign and, when DeJesus agreed to change his story, Mendez destroyed the paper copy and either failed to save the statement on or deleted it from his computer (2 H.R.R. 24-35).

Petitioner alleged that the State destroyed and failed to disclose DeJesus' prior inconsistent statement to Trevino, and that Trevino performed deficiently by failing to elicit the detective's threats that caused DeJesus to change his story. The state habeas trial court found that Detective Mendez testified that he did not destroy or conceal DeJesus' statement in order to impair its availability in the investigation or at trial (App. 9). Petitioner objected that the trial court failed to find whether the State's failure to disclose the statement to the defense violated due process; whether Trevino performed deficiently by failing to impeach DeJesus with the inconsistencies between that statement and his trial testimony; and, whether these errors probably contributed to the conviction (4 H.C.R. 48).

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[6] DeJesus invoked his Fifth Amendment privilege and refused to testify at the habeas evidentiary hearing after the State declined to offer him use immunity (2 H.R.R. 8-13).

c. The State failed to disclose to defense counsel offense reports concerning the deceased's pending charges, failed to correct the deceased's mother's false testimony about those charges, and defense counsel failed to preserve error for appeal.

A prosecutor elicited without objection on direct examination of the State's pathologist that Nelson had a tattoo showing his dedication to Jesus Christ (10 R.R. 139). Nelson's mother, Geana, testified that he was loving, kind, loved to sing and make people laugh, and was "always good in school" (10 R.R. 197-98). Trevino elicited on cross-examination of Ms. Nelson that her son was on bond for a felony arising out of the theft of a gold chain, but that his lawyer and the witnesses said that he was not at fault and that the complainant should have been charged (10 R.R. 200-01).

The State had an offense report in its file at trial reflecting that, four months before Nelson died, while seated in the driver's seat of his car, he gave a bag of what he claimed to be marijuana to two men who were going to pay him $100; that the men decided that the bag did not contain marijuana and would not let go of their money; that Nelson drove away, dragging the men with him; that Nelson's car crashed into a tree, injuring the men; and, that Nelson was charged with robbery and aggravated assault with a deadly weapon (1 H.C.R. 178-216).

The State also had an offense report in its file at trial reflecting that, ten months before Nelson died, he

was charged with theft after he stole another student's cellphone. The police determined that Nelson had pawned or sold 32 items of stolen electronics during the previous six months (1 H.C.R. 166-77).

Trevino could have presented testimony regarding Nelson's conduct on these occasions to show that Nelson was the aggressor in the encounter with petitioner to support self-defense and defense of a third person.

During the state habeas proceeding, the parties disputed whether the trial prosecutors disclosed to Trevino the offense reports on the robbery/aggravated assault charge and the theft charge. The state habeas trial court found that Trevino testified at the habeas evidentiary hearing that the State did not disclose the reports, and that the Third Amended Discovery Acknowledgement—which the prosecutors and Trevino signed and filed with the clerk of the court (1 H.C.R. 158-66)—did not mention these reports (App. 22-23). However, the trial court also found that the prosecutors testified at the habeas evidentiary hearing that the reports were in the State's file, which was available to Trevino before trial (App. 23-24). Petitioner objected that the trial court failed to resolve whether the State suppressed the reports or disclosed them to Trevino; whether Trevino performed deficiently by failing to use them to impeach Ms. Nelson's testimony regarding her son's good character and his "innocence" of his own charges; and, whether these errors probably contributed to the conviction (4 H.C.R. 49).

d. Defense counsel failed to explain to petitioner how evidence of the deceased's pending charges could be used to support self-defense and defense of a third person.

The State anticipated that petitioner might rely on self-defense at trial, as a prosecutor questioned the jury panel on self-defense during the voir dire examination (6 R.R. 36-43).

Trevino testified at the habeas evidentiary hearing that the State did not disclose the Nelson offense reports to him; that, had the State disclosed the reports, he may have informed petitioner how they could be used to support self-defense or defense of a third person; and, had petitioner acknowledged that he fired the shot after Nelson pulled a gun on Evans and him, Trevino would have presented testimony regarding Nelson's pending charges to support self-defense and defense of a third person and to rebut Ms. Nelson's testimony about her son's good qualities and "innocence" of his own charges (2 H.R.R. 83-94).

Petitioner testified at the habeas evidentiary hearing that, had Trevino informed him of the facts underlying Nelson's pending charges and explained how they could be used to support self-defense and defense of a third person, he would have admitted to Trevino that he shot Nelson after Nelson pulled a gun on Evans and him during a marijuana deal and would have testified at trial (2 H.R.R. 226-27).

The state habeas trial court found that Trevino testified at the habeas evidentiary hearing that he did not know the facts of Nelson's pending cases and, as a result, did not explain to petitioner how he could use that evidence to show that Nelson was the aggressor and to obtain jury instructions on self-defense and defense of a third person (App. 22-23); and, that petitioner testified at the hearing that, had Trevino provided this explanation, he would have admitted to Trevino that he shot Nelson in self-defense and in defense of Evans and would have testified at trial (App. 24-25). Petitioner objected that the trial court failed to find whether Trevino performed deficiently and, if so, whether his error probably contributed to the conviction (1 H.C.R. 49).

e. Defense counsel failed to request jury instructions on self-defense and defense of a third person.

Detective Hodgkinson testified that petitioner made a written statement that Evans met a man at the school to buy marijuana, asked to smell it, and gave it back; when petitioner approached the car, the man reached under the seat, pulled out a revolver, and shot petitioner in the shoulder (8 R.R. 128-29).

Trevino presented no cogent theory of defense. He did not request jury instructions on self-defense and defense of a third person. He did not argue that Evans shot Nelson, or that petitioner shot Nelson in self-defense or in defense of Evans. Instead, he argued that

the other juveniles were not being prosecuted and were lying (11 R.R. 41-46); that petitioner's prints were not found on the Glock (11 R.R. 40); and that, accepting the State's theory that petitioner shot Nelson because of a grudge, the offense committed was murder instead of capital murder (11 R.R. 35).

Petitioner alleged that Detective Hodgkinson's testimony would have entitled him to jury instructions on self-defense and defense of a third person, and that Trevino performed deficiently by failing to request these instructions. Petitioner objected that the state habeas trial court had failed to make any findings whatsoever on this issue (1 H.C.R. 50).

f. Petitioner was denied a fair trial as a result of the cumulative prejudice arising from defense counsel's errors and the prosecutorial misconduct.

The state habeas trial court merely summarized the testimony and evidence at the trial and the habeas proceeding without resolving the disputed facts and conducting a meaningful prejudice/materiality analysis. *See United States v. Bagley*, 473 U.S. 667, 678-80 & n. 9 (1985) (discussing "materiality" related to prosecutorial misconduct claim); *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (discussing "prejudice" related to ineffective assistance of counsel claim). These standards are closely related. *See Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Petitioner objected in his Suggestion for Reconsideration that the trial court had failed to

make a "probing and fact-specific" analysis regarding whether Trevino's errors and the prosecutorial misconduct, individually and collectively, were prejudicial and/or material. *See Sears v. Upton*, 561 U.S. 945, 955 (2012).

REASONS FOR GRANTING CERTIORARI

THE TCCA DENIED PETITIONER PROCEDURAL DUE PROCESS BY SUMMARILY REJECTING HIS SUBSTANTIAL CONSTITUTIONAL CLAIMS WITHOUT REQUIRING THE TRIAL COURT TO RESOLVE THE DISPUTED FACTS.

Even if the United States Constitution does not require the states to provide direct appeals or collateral review to defendants in criminal cases, those states that have integrated such post-conviction proceedings into their system must ensure that their procedures comport with the Due Process Clause of the Fourteenth Amendment. *See*, *e.g.*, *Evitts v. Lucey*, 469 U.S. 387, 393 (1985). Texas provides for post-conviction habeas corpus review of a felony conviction resulting in a prison sentence pursuant to article 11.07 of its Code of Criminal Procedure. Therefore, the Due Process Clause applies to Texas habeas corpus proceedings, just as it applies to state court direct appeals,[7]

[7] *See Halbert v. Michigan*, 545 U.S. 605, 610 (2005) (Although "the Federal Constitution imposes on the States no obligation to provide appellate review of criminal convictions," "the Due Process and Equal Protection Clauses require the appointment of

probation and parole revocation proceedings,[8] and driver's license revocation proceedings[9]—none of which is constitutionally required but, if provided by a state, must comport with due process.

As a practical matter, the state habeas corpus proceeding is the main event for prisoners like petitioner who contend that their trial counsel provided ineffective assistance or that prosecutors engaged in misconduct. It has become nearly impossible for state prisoners to obtain habeas corpus relief in federal court under the AEDPA's substantive and procedural barriers.[10]

This Court ultimately must determine whether a state's habeas procedures comport with the Due Process Clause. *See* Ahdout, *Direct Collateral Review*, 121 COLUM. L. REV. 160, 205-06 (2021) (observing that

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counsel for defendants, convicted on their pleas, who seek access to first-tier [appellate] review").

[8] *See Gagnon v. Scarpelli*, 411 U.S. 778, 783-91 (1973) (extending federal due process protections to probationers facing revocation); *Morrissey v. Brewer*, 408 U.S. 471, 481-89 (1972) (extending federal due process protections to parolees facing revocation).

[9] *See Bell v. Burson*, 402 U.S. 535, 539 (1971) ("Once [driver's] licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.").

[10] Petitioner cannot seek federal habeas relief because his AEDPA deadline expired before he was able to retain counsel to file the state habeas application.

Supreme Court review is even more vital where state courts are so dismissive of habeas petitioners' federal constitutional claims that they do not even provide reasons for denying them). This Court has accepted this responsibility by granting certiorari to review the fairness of state habeas proceedings. *See*, *e.g.*, *Foster v. Chatman*, 136 S. Ct. 1737, 1766, n.3 (2016) (holding that a federal question was presented in an unreasonable summary order issued by the highest state court); *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1902 (2016) (state habeas petitioner was denied due process when state supreme court judge—who previously, as the district attorney, had approved a request to seek the death penalty—refused to recuse himself from the appellate proceeding).

Due process requires that a trial court make the findings of fact necessary for a fair adjudication of a claim to enable meaningful appellate review. *See*, *e.g.*, *Black v. Romano*, 471 U.S. 606, 613-14 (1985) (the procedural-due-process-requirement of a "statement" of the adjudicator in a parole revocation proceeding "helps to ensure accurate fact finding with respect to any alleged violation and provides an adequate basis for review to determine if the decision rests on permissible grounds supported by the evidence"). This Court has recognized that "the work of appellate judges is facilitated when trial judges make findings of fact that explain the basis for controversial rulings." *Harris v. Rivera*, 454 U.S. 339, 344 (1981). Due process requires findings of fact "when necessary to assure compliance with the dictates of the Federal Constitution." *Id.* at

344-45 (noting "there are occasions when an explanation of the reason for a decision may be required by the demands of due process").

For decades, this Court has ensured that state habeas corpus evidentiary development and fact-finding procedures comport with due process when substantial federal constitutional claims are presented. *See*, *e.g.*, *Commonwealth of Pennsylvania ex rel. Herman v. Claudy*, 350 U.S. 116, 123 (1956) ("Under the allegations here petitioner is entitled to relief if he can prove his charges. He cannot be denied a hearing merely because the allegations of his petition were contradicted by the prosecuting officers."); *Wilde v. Wyoming*, 362 U.S. 607, 607 (1960) (*per curiam*) ("It does not appear from the record that an adequate hearing on these allegations was held in the District Court, or any hearing of any nature in, or by direction of, the Supreme Court. We find nothing in our examination of the record to justify the denial of hearing on these allegations.").[11] Because this Court has remedied a state habeas trial court's erroneous denial of an evidentiary hearing when a prisoner has alleged facts supporting a substantial federal constitutional claim, it also should remedy a state appellate court's denial of relief in the absence of the findings of fact necessary to enable

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[11] *See also Cash v. Culver*, 358 U.S. 633, 637-38 (1959); *Palmer v. Ashe*, 342 U.S. 134, 137-38 (1951); *Jennings v. Illinois*, 342 U.S. 104, 111-12 (1951); *Rice v. Olson*, 324 U.S. 786, 791-92 (1945); *Tomkins v. Missouri*, 323 U.S. 485, 488-89 (1945); *Williams v. Kaiser*, 323 U.S. 471, 478-79 (1945); *Pyle v. Kansas*, 317 U.S. 213, 215-16 (1942); *Cochran v. Kansas*, 316 U.S. 255, 257-58 (1942); *Smith v. O'Grady*, 312 U.S. 329, 333-34 (1941).

meaningful post-conviction review of substantial federal constitutional claims.

This Court addressed the TCCA's inadequate review of an ineffective-assistance-of-counsel claim in *Andrus v. Texas*, 140 S. Ct. 1875 (2020) (*per curiam*). The state habeas trial court had recommended a new trial on punishment because trial counsel was ineffective. The TCCA denied relief by curtly stating that "applicant fails to meet his burden under *Strickland v. Washington*, 466 U.S. 668 (1984), to show by a preponderance of the evidence that his counsel's representation fell below an objective standard of reasonableness and that there was a reasonable probability that the result of the proceedings would have been different, but for counsel's deficient performance." *Ex parte Andrus*, No. WR-84,438-01, 2019 WL 6220783 at *2 (Tex. Crim. App. Feb. 13, 2019). This Court granted certiorari, found deficient performance, vacated the judgment, and remanded to the TCCA to conduct a proper prejudice analysis. It faulted the TCCA for failing to analyze prejudice in any meaningful respect. *Andrus*, 140 S. Ct. at 1886. "Given the uncertainty as to whether the Texas Court of Criminal Appeals adequately conducted the weighty and record-intensive analysis in the first instance, we remand for the Court of Criminal Appeals to address *Strickland* prejudice in light of the correct legal principles articulated above." *Id.* at 1887.

The TCCA, by failing to order the trial court to resolve the disputed facts relevant to the lawfulness of petitioner's confinement, undermined the fairness of

the state post-conviction habeas corpus process. The TCCA's inadequate review of petitioner's substantial ineffectiveness and prosecutorial misconduct claims violated due process, as the Sixth Amendment right to the effective assistance of counsel at trial is the "foundation for our adversary system." *Martinez v. Ryan*, 566 U.S. 1, 12 (2012).

The constitutional flaw in petitioner's state habeas corpus proceeding was that the trial court made findings that the witnesses testified to certain facts at the habeas evidentiary hearing without resolving which testimony was true and whether Trevino performed deficiently, the prosecutors engaged in misconduct, or both. A trial court's finding that a witness testified to a particular fact does not constitute a finding that the testimony was true, nor does it resolve any disputed facts. For example, the state habeas trial court found both that Trevino testified that the State did not disclose the Nelson offense reports to him and that the prosecutors testified that those reports were in the State's file, which was available to Trevino before trial. The court did not resolve these disputed facts. If the State failed to disclose the reports, the court should have found that the State suppressed favorable impeachment evidence. If the State disclosed the reports, and Trevino failed to read or appreciate them, the court should have found that he performed deficiently. The TCCA rejected petitioner's request to remand for case-specific findings. The state habeas proceeding did not comport with due process.

This Court should grant certiorari because the TCCA's review of petitioner's federal constitutional claims did not comport with due process. SUP. CT. R. 10(c). The Court should vacate the judgment and remand to the TCCA—as it did in *Andrus*—to require the trial court to make specific findings of fact and conclusions of law regarding deficient performance, prosecutorial misconduct, and cumulative prejudice/materiality.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

RANDOLPH L. SCHAFFER, JR.
Counsel of Record
1021 Main, Suite 1440
Houston, Texas 77002
(713) 951-9555
(713) 951-9854 (facsimile)
noguilt@schafferfirm.com

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