No. _____

In The
Supreme Court of the United States

SAMMY JAY RIDDLE,

Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Most criminal defendants plead guilty. Many who do so in Texas receive deferred adjudication probation. The court enters an order deferring a finding of guilt and placing the defendant on probation. If he successfully completes the probation, he avoids a conviction, sentence, and judgment; and the case is dismissed. The deferred adjudication order is not a judgment of conviction and sentence.

When a person who has been on deferred adjudication files a federal habeas corpus petition challenging his guilty plea, the Fifth Circuit calculates the AEDPA statute of limitations from the finality of the deferred adjudication order, not from the finality of the judgment after adjudication of guilt and sentencing. But most defendants have no reason to challenge a guilty plea until after the adjudication of guilt, and that usually occurs long after the deferred adjudication order becomes final. Thus, most defendants never receive federal review of the constitutionality of their guilty pleas.

The Fifth Circuit rule is out of line with how this Court and most federal courts define "judgment" in the context of the AEDPA statute of limitations. Petitioner asks this Court to decide the following issue:

> Whether the Court should apply the rule in *Burton v. Stewart*, 549 U.S. 147 (2007)—that a final judgment in a criminal case means the sentence—and hold that the federal habeas

QUESTION PRESENTED—Continued

corpus statute of limitations does not begin to run until a judgment of conviction and sentence becomes final, not when a prior order deferring adjudication of guilt becomes final.

RELATED CASES

- *State of Texas v. Riddle*, No. 17477, 253rd District Court of Texas. Order of Deferred Adjudication entered February 23, 2016.
- *State of Texas v. Riddle*, No. 17477, 253rd District Court of Texas. Judgment Adjudicating Guilt entered August 22, 2016.
- *Riddle v. State of Texas*, No. 01-16-00657-CR, Court of Appeals for the First District of Texas. Opinion entered August 23, 2018.
- *Riddle v. State of Texas*, No. PD-1007-18, Texas Court of Criminal Appeals. Order Refusing Discretionary Review entered December 5, 2018.
- *Ex parte Riddle*, No. WR-91,158-01, Texas Court of Criminal Appeals. Order Denying Habeas Corpus Relief entered September 7, 2022.
- *Ex parte Riddle*, No. WR-91,158-01, Texas Court of Criminal Appeals. Order Denying Suggestion for Reconsideration entered September 26, 2022.
- *Riddle v. Texas*, No. 22-527, United States Supreme Court. Order Denying Certiorari entered April 3, 2023.
- *Riddle v. Lumpkin*, No. 3:22-CV-330, United States District Court for the Southern District of Texas, Galveston Division. Judgment entered June 26, 2023.
- *Riddle v. Lumpkin*, No. 23-40437, United States Court of Appeals for the Fifth Circuit. Order Denying Certificate of Appealability entered December 4, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Sammy Jay Riddle, respectfully petitions for a writ of certiorari to review the order denying a certificate of appealability (COA) issued by the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's order denying a COA (App. 1-2) is unreported. The federal district court's opinion (App. 3-12) and final judgment (App. 13) denying habeas corpus relief and a COA are unreported.

This Court's prior denial of certiorari is reported at 143 S.Ct. 1083. The Texas Court of Criminal Appeals' (TCCA) denial of habeas corpus relief without written order (App. 14) is unreported. The TCCA's denial of petitioner's suggestion for reconsideration (App. 19) is unreported. The state habeas trial court's findings of fact and conclusions of law (App. 15-18) are unreported.

The TCCA's refusal of petitioner's petition for discretionary review (App. 20) is unreported. The Texas Court of Appeals' opinion affirming the trial court's judgment on direct appeal (App. 21-25) is unreported but is available at 2018 WL 4014036.

The trial court's judgment adjudicating guilt (App. 26-31) is unreported. The trial court's order deferring an adjudication of guilt (App. 32-35) is unreported.

JURISDICTION

The Fifth Circuit denied a COA on December 4, 2023 (App. 1-2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION

Title 28 U.S.C. § 2244(d)(1)(A) provides, "A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of . . . the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. . . ."

STATEMENT OF THE CASE

A. Procedural History

On direct appeal in state court, the Texas Court of Appeals summarized the relevant history of the case that preceded petitioner's habeas corpus proceedings (App. 22-24):

> [Petitioner] was indicted for the offenses of aggravated sexual assault of a child. . . . Almost two years later, he was indicted for the offense of continuous sexual abuse of a young child. . . . The second case was set for trial, but after a jury was selected, [petitioner] and the

State reached a plea agreement. As part of the agreement, [petitioner] pleaded guilty to the charge of aggravated sexual assault of a child. In exchange, the State recommended a deferred adjudication on that charge and a dismissal of the remaining charge of continuous sexual abuse of a young child. The court accepted [petitioner's] guilty plea, and it found that the evidence supported a guilty finding. It deferred adjudication and placed [petitioner] on community supervision [probation] for ten years.

The State subsequently filed a motion to revoke community supervision. After a hearing, the court determined that [petitioner] had committed twenty violations of the conditions of his community supervision. [Petitioner] then was adjudicated guilty and sentenced to 54 years in prison for the offense of aggravated sexual assault of a child.

After appointment of appellate counsel, [petitioner] filed a motion for a new trial, alleging ineffective assistance of counsel relating to the circumstances of his plea bargain. He claimed that his guilty plea was neither knowing nor voluntary because his trial counsel never informed him of a misdemeanor plea-bargain offer made by the State. [Petitioner] contended that had he been aware of the offer, he would have accepted it, and thus his guilty plea was the result of ineffective assistance of trial counsel.

. . .

> The trial court did not grant a requested hearing on the motion for new trial, which was denied by operation of law.

The Texas Court of Appeals refused to address the merits of the ineffective assistance of counsel claim. It held that petitioner "could have appealed from the order placing him on deferred adjudication community supervision when the order was initially imposed" and raised the claim at that juncture (App. 25).[1] The TCCA refused discretionary review on December 5, 2018 (App. 20).

Petitioner filed a state habeas corpus application on March 4, 2020. Among several claims, he alleged the

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[1] This ruling was erroneous because, as a condition of petitioner's plea agreement, he waived the right to appeal from the deferred adjudication order. Also, when he was placed on probation, he was represented by the same lawyer who was ineffective during plea negotiations. A lawyer who was ineffective cannot be expected to challenge his own ineffectiveness. *See Massaro v. United States*, 538 U.S. 500, 503 (2003) ("[A]n attorney . . . is unlikely to raise an ineffective-assistance claim against himself."). In the TCCA, petitioner alleged that trial counsel was ineffective by failing to advise him about counsel's own ineffectiveness, moving to withdraw the guilty plea, and moving to withdraw as counsel—so petitioner at least could properly raise an ineffective assistance claim on direct appeal.

In any event, the Texas courts addressed the merits of petitioner's ineffectiveness claim on state habeas corpus review and did not conclude that it was procedurally barred. For that reason, the ineffective assistance claim was properly before the federal courts. *See Harris v. Reed*, 489 U.S. 255 (1989) (federal constitutional claim properly raised on federal court review if state courts did not clearly rule that claim was procedurally defaulted under state law).

ineffective assistance claim that the state courts refused to review on direct appeal. Petitioner filed affidavits from trial counsel and himself in support of that claim.

The state trial court initially refused to conduct a hearing or make findings of fact and conclusions of law, as required by Texas Code of Criminal Procedure Article 11.07, § 3(d). The TCCA remanded the case to the trial court to "make findings of fact and conclusions of law within ninety days. . . ." *Ex parte Riddle*, WR-91,158-01, 2020 WL 2177300, at *1 (Tex. Crim. App. May 6, 2020). The trial court ignored the TCCA's remand order for more than two years.

Without conducting a hearing, the trial court adopted the State's proposed findings and conclusions *verbatim* on July 12, 2022 (App. 15-18). The cursory findings and conclusions stated, "Applicant received effective assistance of counsel," and, "Applicant fails to state sufficient specific facts to support his grounds for relief" (App. 16).[2] The trial court refused to conduct an evidentiary hearing because "[t]here are no material, previously unresolved issues of fact which are material to the legality of Applicant's conviction and sentence and there being ample evidence in the record for the Court to rule on the relief sought" (App. 17). Rather than conduct a hearing on the substantial ineffective assistance claim, the trial court accepted the trial

[2] The state trial court did not find that petitioner procedurally defaulted his ineffective assistance claim.

prosecutor's affidavit denying that she had offered a misdemeanor plea bargain to trial counsel (App. 16).

Petitioner argued in the TCCA that the trial court erred in denying relief on the ineffective assistance claim without conducting an evidentiary hearing. The TCCA denied relief "without written order . . . on the findings of the trial court without a hearing" on September 7, 2022 (App. 14). This Court denied certiorari on April 3, 2023. *Riddle v. Texas*, 143 S.Ct. 1083 (2023).

Petitioner filed a federal habeas corpus petition on September 8, 2022, one day after the TCCA denied relief. The district court dismissed the petition as time-barred and denied relief and a COA on June 26, 2023 (App. 3-13).

Petitioner moved for a COA in the Fifth Circuit. He asked that it reconsider its rule that the statute of limitations for a federal habeas petition raising claims that address an order deferring the adjudication of guilt begins to run when the deferred adjudication order becomes final, regardless of whether the defendant is later convicted and sentenced. *See Tharpe v. Thaler*, 628 F.3d 719, 723 (5th Cir. 2010). The Fifth Circuit denied a COA on December 4, 2023 (App. 1-2).

B. Relevant Facts

At issue is whether the Fifth Circuit erroneously interprets the AEDPA statute of limitations in the context of Texas's deferred adjudication procedures. Specific to petitioner's case, the question is whether

the federal courts have jurisdiction to consider the merits of his habeas corpus petition or whether it was time-barred.

The chronology of events pertinent to the jurisdictional issue is:

DATE	EVENT
2-23-2016	petitioner placed on deferred adjudication probation; waives right to appeal from that order as condition of plea agreement;
3-24-2016	deadline to file notice of appeal from the order of deferred adjudication (notice not filed because petitioner had waived the right to appeal);
8-22-2016	petitioner's guilt adjudicated; sentenced to 54 years in prison; judgment of conviction entered;
9-20-2016	petitioner filed motion for new trial challenging guilty plea;
8-23-2018	state court of appeals affirmed judgment because petitioner could not challenge guilty plea on appeal from the adjudication of guilt;
12-5-2018	TCCA refused discretionary review;
3-5-2019	deadline to file certiorari petition in this Court (petition not filed); judgment of conviction final on direct review;
3-4-2020	state habeas corpus application filed;

9-7-2022	state habeas corpus relief denied;
9-7-2022	suggestion for reconsideration filed in TCCA;
9-8-2022	federal habeas corpus petition filed;
9-26-2022	TCCA denied reconsideration.

The judgment of conviction and sentence became final on March 5, 2019, when the time to file a certiorari petition in this Court expired after the direct appeal. Petitioner filed a state habeas corpus application within one year of that date, on March 4, 2020, which tolled the AEDPA statute of limitations. The TCCA denied habeas corpus relief on September 7, 2022, which reactivated the limitations period. He filed the federal petition on September 8, 2022, the date that the statute of limitations ran.

REASON FOR GRANTING CERTIORARI

This Court should grant review and resolve the disagreement among lower courts on when the AEDPA statute of limitations begins to run in criminal cases where a defendant initially receives a deferred disposition, avoids a conviction and sentence, and is placed on probation, but where he thereafter violates the probation, has it revoked, is convicted and sentenced, and a judgment is entered. Does the statute of limitations begin to run when the initial deferred adjudication order becomes final or when the judgment of conviction and sentence becomes final?

The Fifth Circuit holds that the limitations period begins to run when the deferred adjudication order becomes final—even though the defendant has not been convicted or sentenced, and no judgment has been entered. *See*, *e.g.*, *Caldwell v. Dretke*, 429 F.3d 521, 528 (5th Cir. 2005); *Tharpe v. Thaler*, 628 F.3d at 723. But that analysis is contrary to *Burton v. Stewart*, 549 U.S. 147, 156-57 (2007), in which this Court interpreted the AEDPA statute of limitations and held, "[f]inal judgment in a criminal case means the sentence. The sentence is the judgment." Other courts, relying on *Burton*, have held that the limitations period begins to run when both the sentence and conviction are final because that judgment is what confines the petitioner. *See*, *e.g.*, *Ferreira v. Secretary, Dept. of Corrections*, 494 F.3d 1286, 1292-93 (11th Cir. 2007). And other courts have held that a federal court lacks jurisdiction over a habeas corpus petition if the state court has not yet entered a final judgment after sentencing. *See*, *e.g.*, *Reber v. Steele*, 570 F.3d 1206, 1209-10 (10th Cir. 2009);[3] *Edelbacher v. Calderon*, 160 F.3d 582, 585 (9th Cir. 1998).

The Fifth Circuit's minority interpretation of the AEDPA limitations statute and its mistreatment of *Bruton* leads to an inefficient, unworkable result. That circuit requires criminal defendants who receive deferred adjudication probation to bifurcate their habeas claims into two separate "judgments"—one being the

[3] Justice Gorsuch was on the panel that decided *Reber*.

deferred adjudication order related to the guilty plea, and the other being the actual judgment of conviction after a violation of probation and the assessment of a sentence. But the AEDPA statute of limitations speaks of one "judgment," not two. 28 U.S.C. § 2244(d)(1)(A). And *Burton* instructs that the "judgment" means the sentence. 549 U.S. at 156. A deferred disposition of a case is not a sentence, as courts only impose sentences after convictions. The Fifth Circuit's approach also requires federal habeas petitioners to comply with a different limitations deadline for each "judgment." It would force the State to defend—and federal courts to decide—two habeas cases instead of one. That approach undermines "AEDPA's goal of streamlining federal habeas proceedings." *Rhines v. Weber*, 544 U.S. 269, 277 (2005).

Accordingly, this Court should grant review to harmonize the manner in which all courts calculate the AEDPA statute of limitations when defendants initially receive deferred dispositions and avoid conviction and sentence but, thereafter, are adjudicated guilty and sentenced, resulting in a final judgment.

I.

THE COURT SHOULD APPLY THE RULE IN *BURTON V. STEWART*, 549 U.S. 147 (2007)—THAT A FINAL JUDGMENT IN A CRIMINAL CASE MEANS THE SENTENCE—AND HOLD THAT THE FEDERAL HABEAS CORPUS STATUTE OF LIMITATIONS DOES NOT BEGIN TO RUN UNTIL A JUDGMENT OF CONVICTION AND SENTENCE BECOMES FINAL, NOT WHEN A PRIOR ORDER DEFERRING ADJUDICATION OF GUILT BECOMES FINAL.

Most criminal cases are resolved by plea agreements; and in Texas, most plea agreements result in deferred adjudication probation. The defendant pleads guilty in exchange for a special type of probation that does not result in a conviction if he successfully completes the probation. Instead, the court enters an order—but not a judgment—that defers a finding of guilt and places the defendant on deferred adjudication probation. If he successfully completes the probation, the case is dismissed, and he avoids conviction. However, if he violates the probation, the court can proceed to adjudication of guilt, assess a sentence, and enter a judgment. The case then proceeds as if the defendant had not been on deferred adjudication in the first place. He may appeal from the judgment of conviction.

There are some procedural wrinkles in Texas's deferred adjudication scheme that cause problems at the post-conviction stage. That is what this case is

about. First, defendants typically waive their right to appeal from the deferred adjudication order as a condition of the plea agreement. So even though the law gives the defendant 30 days to file notice of appeal from the deferred adjudication order, most defendants cannot properly prosecute an appeal because the appellate courts will not have jurisdiction, and an attempt to appeal would constitute a breach of the plea agreement. Moreover, where the defendant has waived his rights and judicially confessed, there usually is nothing to appeal.

In fact, the most common issue that arises from a guilty plea that results in deferred adjudication probation is that the plea was involuntary as a result of ineffective assistance of counsel. Perhaps the case was defensible, but counsel failed to advise the defendant of how the law applied to the facts of his case. Perhaps counsel misadvised the defendant of a material consequence of the plea, such as deportation or sex offender registration or that another probation or parole would be revoked as a direct result. Or, as here, perhaps counsel failed to convey a more favorable plea offer to the defendant that expired before the defendant could accept it. The procedural problem is that, once the defendant begins deferred adjudication probation, he cannot file a motion for new trial to challenge the voluntariness of the plea because, in Texas, a defendant can only move for a new trial from a judgment of conviction. And a deferred adjudication order is not a judgment of conviction.

Petitioner waived his right to appeal and accepted a plea agreement for deferred adjudication probation. The court entered an order, but not a judgment, placing him on probation. He could not move for a new trial to challenge the voluntariness of his plea based on ineffective assistance of counsel and develop the evidentiary record for the claim. And he could not appeal from the order because he had waived that right.

A few months later, the State moved to adjudicate petitioner's guilt based on alleged probation violations. The trial court conducted a hearing, found some of the alleged violations to be true, adjudicated guilt, assessed punishment at 54 years in prison, and entered a judgment of conviction and sentence. Petitioner then moved for a new trial—which was permitted at that stage—challenging the voluntariness of his initial plea. He developed evidence in support of the claim. The trial court denied the motion for new trial, and he appealed. This is where the procedural gotcha began.

The Texas court of appeals held that petitioner could not challenge the voluntariness of his initial guilty plea in an appeal from the judgment adjudicating guilt. Texas law required him to challenge that plea in an appeal from the deferred adjudication order. But we now know that he had waived the right to appeal from that order and could not have filed a motion for new trial at that stage to challenge that plea.

Petitioner asked the TCCA to revisit that rule, but it refused that request on December 5, 2018. His deadline to petition this Court for a writ of certiorari was

March 5, 2019. He did not seek review here, so his judgment of conviction became final on appeal that day, and his AEDPA statute of limitations to file a federal habeas corpus petition began to run the same day. He had until March 5, 2020, to file a federal petition or to file a state habeas corpus application that would toll the federal limitations period.

Petitioner filed a state habeas corpus application on March 4, 2020. He raised, among other issues, the claim that his guilty plea was involuntary based on ineffective assistance of counsel because his counsel failed to convey a plea offer for a misdemeanor, and the offer had expired before petitioner knew about it. Counsel provided an affidavit acknowledging the facts in support of the claim. The prosecutor filed an affidavit disputing that she made the plea offer. The state habeas trial court refused to conduct an evidentiary hearing, credited the prosecutor's affidavit, and recommended that relief be denied. The TCCA denied relief on September 7, 2022, so the AEDPA limitations clock began to run again. Petitioner promptly filed a federal habeas corpus petition on September 8, 2022.

The federal district court concluded that the petition was time-barred because the deferred adjudication order was a "judgment" for the purpose of calculating the AEDPA deadline. *Caldwell v. Dretke*, 429 F.3d 521, 528 (5th Cir. 2005). Therefore, "the statute of limitations for a federal habeas application raising claims that address his deferred adjudication begins to run when his deferred-adjudication order becomes final, whether or not he is later convicted and

sentenced." *Tharpe v. Thaler*, 628 F.3d 719, 723 (5th Cir. 2010). The district court denied habeas corpus relief because the application was untimely under the Fifth Circuit's interpretation of the AEDPA. It concluded that petitioner's conviction became final on March 24, 2016, when he did not appeal from the deferred adjudication order, and that the deadline to file a federal habeas petition challenging the guilty plea expired one year later on March 24, 2017.

The problem is that petitioner's direct appeal in state court was pending from September of 2016, when he filed the motion for new trial that commenced the appellate process, until December of 2018, when the TCCA refused discretionary review of his case on direct appeal. He could not properly have filed a state habeas corpus application or a federal habeas corpus petition while his direct appeal was pending. Either would have been dismissed for lack of jurisdiction.

Petitioner moved for a COA in the Fifth Circuit and asked that court to revisit its interpretation of the AEDPA limitations statute in Texas deferred adjudication cases, as delineated in *Caldwell* and *Tharpe*. That court denied a COA, which brings petitioner here.

Title 28 U.S.C. § 2244(d)(1)(A) provides, "A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of . . . the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such

review. . . ." There is an irreconcilable conflict between how the Fifth Circuit interprets when the AEDPA limitations clock begins to run in Texas deferred adjudication cases and how this Court and other circuits define a "judgment" and begin that calculation in other federal habeas corpus cases. Indeed, even the Fifth Circuit interprets the statute differently in other contexts.

This Court has held that, in the context of the AEDPA statute of limitations, "[f]inal judgment in a criminal case means the sentence. The sentence is the judgment." *Burton v. Stewart*, 549 U.S. 147, 156-57 (2007). Although *Burton* was not a statute of limitations case, the relevant discussion of finality in *Burton* was specifically directed to the AEDPA statute of limitations. *See also Deal v. United States*, 508 U.S. 129, 132, (1993) ("A judgment of conviction includes both the adjudication of guilt and the sentence."); *Teague v. Lane*, 489 U.S. 288, 314 n.2 (1989) (plurality opinion) ("As we have often stated, a criminal judgment necessarily includes the sentence imposed upon the defendant.").

Adhering to the decision in *Burton*, other courts have held, in the context of re-sentencings, that the limitations period begins to run when *both the sentence and conviction are final* because that judgment is what confines the petitioner. *Ferreira v. Secretary, Dept. of Corrections*, 494 F.3d 1286, 1292-93 (11th Cir. 2007); *Rashad v. Lafler*, 675 F.3d 564, 568-69 (6th Cir. 2012); *Villaneda v. Tilton*, 432 Fed.Appx. 695, 695 (9th Cir. 2011); *see also Hess v. Ryan*, 651 F.Supp.2d 1004, 1018-21 (D. Ariz. 2009) (collecting cases). Indeed, even

the Fifth Circuit holds that, when a defendant is resentenced, the AEDPA limitations period does not begin to run until both the conviction and sentence are final. *Scott v. Hubert*, 635 F.3d 659, 666 (5th Cir. 2011) (federal petitions of state court convictions under 28 U.S.C. § 2254); *United States v. Messervey*, 269 Fed.Appx. 379, 380-81, 2008 WL 631499, *1-2 (5th Cir. 2008) (motions to vacate federal convictions under 28 U.S.C. § 2255).

And several circuit courts have held that a federal court lacks jurisdiction over a habeas corpus petition if the state court has not yet entered a final judgment after sentencing. *See*, *e.g.*, *Reber v. Steele*, 570 F.3d 1206, 1209-10 (10th Cir. 2009);[4] *Edelbacher v. Calderon*, 160 F.3d 582, 585 (9th Cir. 1998); *Easley v. California*, 2008 WL 802491, *1-2 (E.D. Cal. 2008) (federal court lacks jurisdiction to consider habeas petition of defendant on "deferred entry of judgment" because no final state court judgment, as case will be dismissed if defendant successfully completes deferred probation).[5]

The Fifth Circuit's rule in *Caldwell* and its subsequent disregard in *Tharpe* for this Court's decision in *Burton* are in the distinct minority of how to interpret the finality of judgments in the context of the AEDPA statute of limitations. When this Court denied certiorari in *Caldwell*—before it decided *Burton*—Justice

[4] Justice Gorsuch was on the panel that decided *Reber*.

[5] California's "deferred entry of judgment" appears identical to Texas's deferred adjudication of guilt, in that neither results in a judgment of conviction if the defendant satisfies the conditions of probation, and both result in dismissal of the charge.

Stevens issued a statement disagreeing with the Fifth Circuit's conclusion that a deferred adjudication order is a "judgment" under the AEDPA. However, he predicted, "This narrow holding is unlikely to produce injustice." *Caldwell v. Quarterman*, 127 S.Ct. 431, 432 (2006) (Stevens, J., statement respecting denial of certiorari). Justice Stevens's wisdom usually proved to be correct over the years. Unfortunately, this instance has not proven to be one of them. Countless Texas criminal defendants are deprived of the opportunity to challenge their guilty pleas on federal habeas because of an unworkable, draconian limitations calculation rule that effectively deprives them of the Great Writ. The time has come for this Court to address the issue and harmonize the law.

The Court should grant certiorari, vacate the Fifth Circuit's order denying a COA, and instruct the Fifth Circuit to remand to the district court to consider the merits of the constitutional claims in the habeas petition.

CONCLUSION

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

Respectfully submitted,

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