

No.

24-5212

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

**FILED**

AUG 01 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Clarence Wyatt Holland — PETITIONER  
(Your Name)

vs.

Bobby Lumpkin, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - Fifth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Clarence Wyatt Holland  
(Your Name)

3201, FM 929, Gatesville, TX, 76597  
(Address)

Gatesville, TX, 76597  
(City, State, Zip Code)

N/A  
(Phone Number)

**QUESTION(S) PRESENTED**

1. Did the Circuit Court reach its holding after applying incorrect harmless-error standard and disregarding the compelling record evidence of prejudice? Further, did the Circuit Court's misapplication of existing Supreme Court law deny fundamental justice to Holland, when the prosecutor vouched for the credibility of its case?
2. Did the Circuit Court reach its' holding that defense counsel was not ineffective and did not prejudice Holland after applying incorrect and contrary to Supreme Court law cases, that also deny fundamental justice to Holland?

## **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**

## **TABLE OF CONTENTS**

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## **INDEX TO APPENDICES**

APPENDIX A	United States Court of Appeals - Fifth Circuit
APPENDIX B	Decision of United States District Court
APPENDIX C	Decision of State Court Denying Habeas Corpus
APPENDIX D	Decision of State Supreme Court Denying Review
APPENDIX E	Decision of trial court
APPENDIX F	

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 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 is unpublished.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 United States district 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.

For cases from **state courts**:

The opinion of the highest state court to review the merits 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 \_\_\_\_\_ 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.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5/29/2024.

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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] 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**

Sixth Amendment: Right to effective assistance of counsel

Fourteenth Amendment: Right to equal protection of the law

## **STATEMENT OF THE CASE**

Appellant Holland pled not guilty to continuous sexual abuse of a child in a he said/she said case, absent of any evidence, in number 17-10195-422-F of the 422nd District Court in Kaufman County, Texas. A jury convicted him and sentenced him to 50 year's, without parole. Holland's direct appeal was denied on 12/13/2019. Holland's writ of habeas corpus was denied without written order on 4/1/2021. Holland's petition for discretionary review was refused on 3/25/2020. Holland's Federal § 2254 was denied on 11/16/2023. Holland's COA was denied by the Fifth Circuit Court of Appeals on 5/29/2024.

## REASONS FOR GRANTING THE PETITION

### Question 1:

This Court has explained that prosecutorial misconduct may rise to a due process violation, including when a prosecutor "vouches for the credibility of witnesses," United States v. Robinson, 485 U.S. 25, 33, n, 108 S. Ct. 864, 99 L. Ed. 2d 23 (1988), "express[es] his personal opinion concerning the guilt of the accused," United States v. Young, 470 U.S. 1, 18, 105 S.Ct. 1038, 84 L. Ed. 2d 1 (1985), etc. The ultimate question, has been whether a prosecutor's conduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Donnelly v. DeChristoforo, 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed. 2d 431 (1974).

In Young, this Court identified that one of the "two dangers" in determining whether misconduct rises to the level of a due process violation, is if "the prosecutor's opinion carries with it unprudence of the Government which induces the jury to trust the Government's judgment rather than its own view of the evidence." Id., at 18-19, 105 S.Ct. 1038, 84 L. Ed. 2d 1. Holland cries foul here, and asserts that the prosecutor's telling the jury that he "believes in the case" and had a chance to throw it out if he did not, "jeopardized his right to be tried solely on the basis of the evidence [in this case, lack of evidence] presented to the jury." Id., at 18, 105 S.Ct. 1038, 84 L.Ed. 2d 1:

Indeed, this opinion by the prosecutor during voir dire, gave the jury the improper influence and credibility of the Government in assessing the case, and the evidence they would be hearing at the guilt phase of the trial. This Court should grant this Petition because the Federal Court's incorrectly applied the harmless-error standard of this Court, as well as existing Supreme Court law that denied Holland fundamental justice.

### Question 2:

The federal magistrate judge acknowledged that the prosecutor's comments were improper under Texas Law because he constituted his own opinion that Holland was guilty (ROA: 147). But then, the Magistrate judge upheld the state court's denial of relief on the basis that Holland failed to prove that the state court's "no

(Continued)

prejudice" conclusion was unreasonable (ROA: 149-50). Then, to add more prejudice, the district court agreed, and denied Holland a COA even though the magistrate judge flat-out acknowledged that "fairminded judges could debate" the issue of prejudice (ROA: 151). What'smore, the magistrate judge recognized and acknowledged that Holland's trial counsel's ignorance of applicable law may preclude an argument that he made a sound strategic decision not to object (ROA: 149).

This Court has opined that plain error that is obvious; affects the defendant's substantial rights; and seriously affects the fairness, integrity, or public reputation of the judicial proceeding. United States v. Young, 470 U.S. 1, 15-17 (1985). The Fifth Circuit has also required reversal of the same plain error. United States v. Gracia, 522 F.3d 597, 600-06 (5th Cir. 2008).

Plain error doctrine has compelled reversal when the prosecutor argued that the government and its agents have no interest in convicting the wrong person, that the case would not be prosecuted if the defendant's guilt had not been determined already, and that the government witnesses were telling the truth. *Id.* Still, when Holland's prosecutor did exactly that, on the record, noticed and cited by appellate court's, he was still denied relief.

Here, the prosecutor told the jury panel that, essentially, the State had vetted the case, and that they wouldn't have brought charges against Holland, and would have dismissed the case, if they felt the complainant wasn't telling the truth. Holland's counsel's failure to object this improper vouching resulted in Strickland prejudice when and where the jury verdict depended on witness credibility, and the prosecution relied solely on the complainant's testimony. *Id.*, 466 U.S. at 695-96.

Here too, this Court should grant this Petition.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
U.S. v. Robinson	
U.S. v. Young	
Strickland V. Washington	
Hall v. U.S.	
Berger v. U.S.	
Donnelly v. DeChristoforo	
U.S. v. Gracia	

## STATUTES AND RULES

28 U.S.C. § 2254(d)

## OTHER

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cedric D. Clegg

Date: 22 Jul 24