

NO. 24-5287

IN THE SUPREME COURT OF THE UNITED STATES

JOHN PHILLIP BENDER,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition for Writ of Certiorari
To The Third Court of Appeals of Texas, and,
To The 331st District Court of Travis County, Texas.

REDRAWN PETITION FOR REHEARING

John Phillip Bender,
pro se Petitioner
2503 Robinwood Lane
Denton, Texas 76209
Tel. (512) 318-0677
Email: johnphillipbender@yahoo.com

REDRAWN PETITION FOR REHEARING

John Phillip Bender, petitioner, appearing pro se, proceeding in forma pauperis, petitions this Court to grant a rehearing of petitioner's petition for writ of certiorari. A true and correct copy of the Clerk's December 2, 2024 letter to petitioner, of failure to comply with Rule 44, returning petitioner's original petition for rehearing, is appended hereto. The Court requires that a redrawn petition for rehearing, in corrected form, complying with Rule 44, be filed within 15 days of the date of the Clerk's letter, by December 17, 2024, in order to file for rehearing. This is a redrawn petition for rehearing of the Order denying the petition for writ of certiorari and is timely filed as directed.

OCTOBER 15, 2024 DENIAL

A true and correct copy of the Clerk's October 15, 2024 letter to petitioner, of the Court's denial of petitioner's writ of certiorari, is appended hereto.

RULE 44 CERTIFICATION OF PETITIONER, A PARTY WITHOUT REPRESENTATION

Certification of petitioner, mandated by Rule 44, is appended hereto.

INTERVENING CIRCUMSTANCES OF SUBSTANTIAL AND CONTROLLING EFFECT

Division in circuits after denial of the petition can be, and often is, the basis for rehearing, if granted. Rule 44.2; *Massey v. United States*, 291 U.S. 608, 609-610, 54 S.Ct. 1019 (1934). As explained below, this is unlikely or impossible in this case, because of laws unique to Texas. There is an intervening circumstance of substantial and controlling effect, however. The petition presented that: there is no jury verdict finding guilty of the offense charged and the 2009 written judgment states contrary, The 2023 Opinion Below acknowledges the record truth, directly conflicting with the 2011 Opinion from the same state court. What remains are conflicting opinions and

conflicting sworn certifications of the district clerk. The intervening circumstances are that Travis County District Attorney failed to reply, respond or otherwise correct the record after the filing of the petition. The demands imposed by a policy in favor of finality of decisions are against interests of justice herein. The process of resolving deliberate acts of false recording of jury findings, post trial entry of jury acquittal as convicted, must begin by requiring the State to respond.

OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED

See Rule 44.2; *Schriber v. Schroth Co. v. Cleveland Trust Co.*, 305 U.S. 47, 50, 59 S.Ct. 8, 83 L.Ed. 34 (1938). In *Schriber*, certiorari was granted following a showing that a conflict among circuits is unlikely because all potential litigants are located in the same circuit.

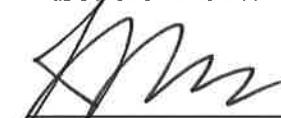
There will never be a conflict between circuits or states on the important issues presented herein. Texas separation of powers law is unique, different from the other 49 states and federal government. In Texas, the Prosecution-the District Attorney-is part of the judicial branch, the power to prosecute criminal cases belongs to the judicial branch. *State v. Stephens*, 664 S.W.3d 293 (Tex.Crim.App. 2022). Presumption of correctness of written judgments, founded on accepted standards of separation of powers, is inapplicable to Texas, which also has bifurcated highest courts which declined review.

The sole state remedy is a now for then proceeding to correct the record to speak the truth. What requires correction is the State's conviction label attached to jury acquittal events under controlling federal law. The DA should be required to respond and correct the record. Otherwise, the Court should enforce constitutional protections.

PRAYER

Petitioner asks that his redrawn petition for rehearing of his petition for writ of certiorari be granted, after affording the State opportunity to reply and correct the record; and, that certiorari summary disposition be entered, granting the petition for writ of certiorari, vacating the judgment, remanding to the Texas Court of Appeals, Third District, for further consideration in light of *McElrath v. Georgia*, 601 U.S. 87, 144 S.Ct. 651, 217 L.Ed.2d 419 (2024)..

RESPECTFULLY SUBMITTED,

 12/17/2024

John Phillip Bender, pro se petitioner
2503 Robinwood Lane
Denton, Texas 76209
Tel. (512) 318-0677
Email: johnphillipbender@yahoo.com

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

October 15, 2024

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

Mr. John Phillip Bender
417 Fantail Loop
Apt. B
Lakeway, TX 78734

Re: John Phillip Bender
v. Texas
No. 24-5287

Dear Mr. Bender:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

NO. 24-5287

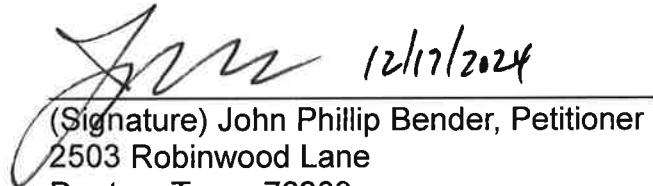
IN THE SUPREME COURT OF THE UNITED STATES
JOHN PHILLIP BENDER-PETITIONER

VS.

THE STATE OF TEXAS-RESPONDENT

**RULE 44 CERTIFICATION OF PETITIONER, A PARTY WITHOUT
REPRESENTATION**

I, John Phillip Bender, pro se petitioner, certify that the foregoing redrawn petition for rehearing is presented in good faith and not for delay; and, is limited to grounds specified by Rule 44.



12/17/2024
(Signature) John Phillip Bender, Petitioner
2503 Robinwood Lane
Denton, Texas 76209
Tel. (512) 318-0677
Email: johnphillipbender@yahoo.com

**Additional material
from this filing is
available in the
Clerk's Office.**