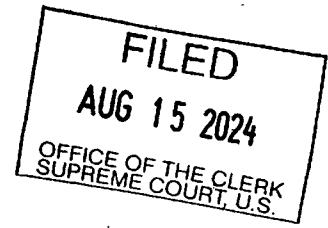


24-5563

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Eloy Vela Jr. — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Criminal Appeals of Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

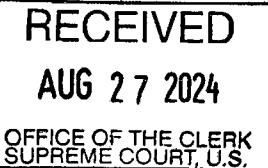
PETITION FOR WRIT OF CERTIORARI

Eloy Vela Jr., #02298280
(Your Name)

12071 F.M. 3522
(Address)

Abilene, TX 79601
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1. 1. Whether newly discovered evidence containing both mitigating and aggravating factors can be simply concluded in state post-conviction proceedings without reweighing the totality of all the evidence violates the 14th Amendment Due Process and Equal Protection of law clause?

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.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A --Post card denial by the Court of Criminal Appeals
of Texas

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Trevino v. Davis, 584 U.S. 1019 (2010).....	5
STATUTES AND RULES	
Texas Penal Code 22.021 section B.....	3
OTHER	

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[] is unpublished.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 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 _____.

[] 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 June 5, 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

14th Amendment

- No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Texas Penal Code 22.021 section (B)

- The victim of the offense is younger than (14)fourteen years of age at the time the offense is committed.

STATEMENT OF THE CASE

Petitioner pled guilty to Counts 1-3 of the offense of aggravated sexual assault of a child. On April 27, 2016, the court ordered him to 10 years of Deferred Adjudication. On December 18, 2017, the court revoked his probation due to his inability to adhere to the court ordered drug program. The trial court sentenced him to 50 years in the Texas Department of Criminal Justice. On March 25, 2022, Chasity Vela, the complainant in this case, submitted a notarized affidavit recanting the allegations against him. Petitioner immediately filed a writ of habeas corpus challenging conviction, based on a claim of actual innocence. The Texas Court of Criminal Appeals ultimately denied his writ on June 5, 2024. Petitioner filed a timely motion to reconsideration on June 9, 2024. The Court denied his motion on June 21, 2024.

REASONS FOR GRANTING THE PETITION

A. A State Court Has Decided an Important Question of Federal Law That Has Not Been But Should be Settled By This Court.

This case is of National Importance as the State of Texas is making a diverging path towards which newly discovered evidence claims deserve the proper consideration of Due Process and Equal Protections of law. In Trevino v. Davis, 584 U.S. 1019 (2010), the U.S. Supreme Court held that the truncated approach is in direct contravention of this Court's precedent, which has long recognized that a court cannot simply conclude that new evidence in aggravation cancels out new evidence in mitigation; the true impact of new evidence, both aggravating and mitigating, can only be understood by asking how the jury would have considered that evidence in light of what it already knew.

Petitioner in this case presented to the court a sworn affidavit from the original complainant willing testify in the presence of the judge, and prosecutor that the allegations against the Petitioner were false. The trial court concluded without a hearing that the testimony of a young child is far more credible than that of a much more articulate young woman who stated quite clearly that "she was young, but she would have remembered if those things would have happened". The State went off the record, and completely disregarded the new evidence that has come to light.

The Court in this case did not place itself in the shoes of the jury to review the new evidence as the jury would have at trial, as Williams & Rompilla suggests nor did it deem it necessary to have the trial counsel respond to the allegation that he provided ineffective assistance of counsel. The State of Texas is doing a grave injustice in side stepping establish precedent and not allowing petitioners claiming newly discovered evidence any realistic opportunity at obtaining relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Elroy Ueda Jr

Date: 8-13-2024