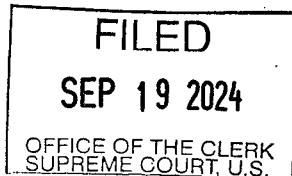


24-5598

No. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Robert Norman Smithback — PETITIONER  
(Your Name)

vs.

State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Robert Norman Smithback  
(Your Name)

3060 Farmers Market 3514  
(Address)

Beaumont, Texas 77705  
(City, State, Zip Code)

None  
(Phone Number)

QUESTION(S) PRESENTED

#1. Whether The State of Texas Has Deprived  
Petitioner of His Post-Conviction Equal  
Protection Due Process Rights Under The 14th  
Amendment of the United States Constitution?

## 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

Ex Parte Smithback, Cause No. W01-73701-E,  
Writ No. 64,603-5 (Tex. Crim. App.-2024)

Texas v. Smithback, F01-73701-TR (265<sup>th</sup>  
Judicial District Court, Dallas County, Texas)

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## TABLE OF AUTHORITIES CITED

## CASES

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## STATUTES AND RULES

STATUTES AND RULES  
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**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 is unpublished.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 is unpublished.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 \_\_\_\_\_ 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 Texas Court of Criminal Appeals court appears at Appendix D 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 7 August, 2024.  
A copy of that decision appears at Appendix D.

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**

Amendment 14 § 1, United States Constitution

Article 11.07, et seq, Texas Code of Criminal Procedure

## STATEMENT OF THE CASE

On January 21st, 2024 Petitioner Robert Norman Smithback (hereinafter, "Smithback") filed his fifth "Application For A Writ of Habeas Corpus Under Texas Code of Criminal Procedure, Article 11.07;" (Hereinafter, "article 11.07"). Complementing the writ is a "Memorandum of Law In Support of Habeas Corpus Relief." See Appendix "A."

On April 23rd, 2024 the Respondent, through the Dallas County District Attorney's Office, filed the "State's Response To Application For Writ of Habeas Corpus." See Appendix "B." Smithback waived his response.

On April 26th, 2024 Judge Jennifer Bennett of the 265th Criminal District Court, Dallas County, Texas, filed her "Order Finding No Controverted, Previously Unresolved, Factual Issues Requiring A Hearing." See Appendix "C."

The Texas Court of Criminal Appeals received Smithback's "Application For Writ of Habeas Corpus" on May 22nd, 2024 and dismissed it "without written order" on August 7th, 2024. See Appendix "D."

Smithback now applies for a Writ of Certiorari to this Court.

## REASONS FOR GRANTING THE PETITION

Ground #1. The State of Texas Is Depriving Petitioner of His Post-Conviction Equal Protection Due Process Rights Under The 14th Amendment, United States Constitution.

Smithback brought before the Texas Court of Criminal Appeals two grounds of relief in his Application for Writ of Habeas Corpus (hereinafter, "Application"). The first ground is, "Actual Innocence - State Lacked Subject Matter Jurisdiction to Prosecute Case." See Appendix A1 @ 6. The second ground is, "Actual Innocence - Denial of A Right To A Trial By Jury." Id. @ 8. "It is not necessary for an applicant to prove his innocence, rather, all that is necessary is a prima facie showing of actual innocence, sufficient to overcome Tex. Code Crim. Pro. art. 11.07 § 4, so that we can then consider the merits of the claim." See Ex Parte Brooks, 219 S.W.3d 396 (Tex. Crim. App. 2007), citing Schlup v. Delo, 513 U.S. 390 (1995). "A credible claim of actual innocence serves to bring the petitioner within the 'narrow class of cases implicating a fundamental miscarriage of justice.'" Brooks @ 400.

"The procedure set forth in Tex. Code Crim. Pro.

art. 11.07 is the exclusive state felony post-conviction judicial remedy available in Texas. The purpose of the Writ of Habeas Corpus is simple, it is a process utilized to determine the lawfulness of confinement. However, habeas corpus is available to review only jurisdictional defects, or a denial of one's fundamental or constitutional rights." Ex Parte Adams, 768 S.W.2d 281 (Tex. Crim. App. - 1981). "Under the procedure authorized by Tex. Code Crim. Pro. art. 11.07, if the trial court convenes a hearing, elicits testimony and thereby develops facts, the Court of Criminal Appeals is not bound by the trial court's findings and conclusions of law." Id. "The Texas Court of Criminal Appeals is the ultimate fact finder in habeas corpus proceedings. The trial judge on habeas is the original fact finder." Ex Parte Reed, 271 S.W.3d 698 (Tex. Crim. App. - 2008). Article 11.07(c) of the Texas Code of Criminal Procedure says "[w]ithin 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicants confinement..."

In this case, unfortunately, Smithback's grounds

for habeas relief implicates judicial misconduct by the convicting trial court. Thus the reason why the trial court has never held an evidentiary hearing. Nor will the trial court ever hold one. This conflict of interest creates a direct violation of the equal protection and due process clauses of the 14th Amendment of the United States Constitution. Article 11.07 does not mandate the convicting court to hold evidentiary hearings. This is discretionary and further violates both the equal protection and due process rights of the 14th Amendment.

Smithback therefore requests that this Court reverses the dismissal of his application and remands it back to the Texas Court of Criminal Appeals so that justice will be done.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert J. Smithwick

Date: September 9<sup>th</sup>, 2024