

24-5788

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

ORIGINAL

\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

FILED

OCT 10 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Nico Allen-Antonio Cogdill — PETITIONER  
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals in Austin

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

PETITION FOR WRIT OF CERTIORARI

Nico Allen-Antonio Cogdill  
(Your Name)

12071 FM 3522  
(Address)

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

N/A  
(Phone Number)

## QUESTION(S) PRESENTED

- Q. Whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial?
- Q. Whether Article 11.07, Section 4(a)-(c). of the Texas Code of Criminal Procedure is UNCONSTITUTIONAL as applied to Applicant's ineffective assistance of trial counsel claim when he was not provided Habeas Counsel in his Initial-Review Collateral proceeding?

## 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

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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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 18th Judicial Dist. of Johnson county 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.

## 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 6/19/2024.  
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 7/16/2024, and a copy of the order denying rehearing appears at Appendix N/A. Please note. TCCA did not provide notice of denial.

☐ 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

Fourteenth Amendment of the U.S. Constitution:

Sec.1[Citizens of the United States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and the State wherein they reside. 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, nor deny to any person within its jurisdiction the Equal Protection of the laws.



## STATEMENT OF THE CASE

Petitioner was indicted on December 15, 2011 for "Capital Murder" (i.e., Count One). The State elected not to pursue the death penalty. At trial, Petitioner entered a plea of "not guilty". After hearing all the evidence, the jury found Petitioner guilty as charged. A sentence of life without parole was mandatory pursuant to TEX. PENAL CODE ANN. § 12.31 (a)(2). On September 17, 2014, the Fourth Court of Appeals affirmed Petitioner's conviction in an unpublished opinion. Petitioner filed an application for writ of habeas corpus pursuant of Art. 11.07 of the TEX. CODE CRIM. PROCEDURE with the district court which was denied without written order by the Texas Court of Criminal Appeals on June 19, 2024. Petitioner then submitted his timely motion to reconsider to the Texas Court of Criminal Appeals and was denied on July 16, 2024.

## REASONS FOR GRANTING THE PETITION

- Q. Whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of effective assistance at trial?

This case seeks to vindicate the Constitutional Right to Habeas Counsel in initial-review collateral proceedings. It calls for an answer to the question expressly "left open" in Coleman v. Thompson, 11 S.Ct. 2546 (1990), and touched on by Martinez v. Ryan, 132 S. Ct. 1309 (2012), and Trevino v. Thaler, 133 S. Ct. 1911 (2013).

The Texas Court of Criminal Appeals has decided an important question of federal law that has not been, but should be, settled by this Court. Although the Supreme Court has never resolved the question at hand, the Texas Court of Criminal Appeals has held that a state prisoner does NOT have a Constitutionally protected right to Habeas Counsel in initial-review collateral proceedings. See, Ex parte Graves, 70 S.W.3d 103 (Tex. Crim. App. 2002) [Held: "There is no constitutional right to effective assistance of counsel on a writ of habeas corpus"]; See also, Ex parte Sledge, 391 S.W. 3d 104 (Tex. Crim. App. 2013).

Applicant avers that the Texas Court of Criminal Appeals holding is contrary to the Supreme Court precedents of Douglas v. California, 357 S. Ct. 814 (1963); Evitts v. Lucey, 105 S. Ct. 830 (1985); Halbert v. Michigan, 125 S. Ct. 2582 (2005); and the rationales of Martinez and Trevino.

Although the holding in Martinez was equitable and does not apply to state courts, the rationales highlighted a significant risk of injustice when a prisoner is not afforded counsel in an initial-review collateral proceeding.

After the scathing criticism in Trevino, which articulated how the Texas procedural system fails to provide an adequate vehicle by which prisoners may effectively challenge the effectiveness of trial counsel's performance, the State of Texas has refused to correct the clear flaws in its system. This has created a violation of Constitutional magnitude which affects every indigent prisoner in Texas. All indigent Texas prisoners will continue to receive inadequate Habeas review in violation of the Fourteenth Amendment until the Supreme Court answers this question. Therefore, the question presented is of great public importance.

Applicant avers that to satisfy the Fourteenth Amendment, an indigent prisoner has a Right to the appointment of appellate counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance of trial counsel. In Texas, Habeas Corpus is such a collateral proceeding.

The answer to this question is framed by two Supreme Court precedents concerning state-funded appellate counsel- Douglas v. California, 83 S. Ct. 814 (1963), and Ross v. Moffitt, 94 S. Ct. 2437 (1974).

In Douglas this Court held that "where the merits of the one and only appeal an indigent has of right are decided without benefit of counsel, an unconstitutional line is drawn between rich and poor which violates the Fourteenth Amendment"-Douglas thus established that as a matter of constitutional law, adequate appellate review is impossible unless counsel has been appointed to indigent prisoners.

Later, in Ross, this Court held that a state need not appoint counsel to aid a poor person seeking to pursue a second-tier discretionary appeal.

The question presented by Applicant is essentially one of classification: Which of these two precedents provides the controlling instruction?

Presently, Texas has bracketed the Right of Counsel on Habeas Corpus with Ross because it is state post-conviction proceedings/collateral review.

This has been premised on Coleman v. Thompson, 111 S. Ct. 2546 (1991) which broadly stated that "there is no constitutional right to attorney in state post-conviction proceedings". See also, Ex parte Graves, 70 S.W. 3d 103 (Tex. Crim. App. 2002).

HOWEVER, in Martinez, this Court clarified that Coleman expressly "left open" the question of "whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial". See, Martinez, at 1315. This is precisely the question presented to this Court.

Furthermore, in a subsequent ruling, Trevino, this Court held that Texas procedure made it "virtually impossible" for appellate counsel to present an adequate ineffective assistance claim on Direct Appeal. See, Trevino at 1918. Consequently, the better and prescribed procedural mechanism for pursuing such a claim is almost always through Writ of Habeas Corpus proceedings. See also, Freeman v. State, 125 S.W. 3d 505, 506 (Tex. Crim. App. 2003).

This makes Habeas Corpus the "initial-review collateral proceeding" for ineffective assistance claims in Texas and is the equivalent of a prisoners Direct Appeal as to such claims. See, Ex parte Buck, 418 S.W. 3d 98, 109 (Tex. Crim. App. 2013).

Applicant avers that this distinction should put the answer to this question squarely under Douglas. This is because:

- a. Habeas Corpus is a WRIT OF RIGHT. See, Tex. Const. 1, §12; Tx. C. Cr. P., art 1.08.
- b. Habeas Corpus is the designated First-Tier and "initial-review collateral proceeding" for ineffective assistance claims in Texas.
- c. Habeas Corpus decides the claims merits and no other court has addressed the ineffective assistance claims.
- d. Error-correction is the Habeas Corpus proceedings prime function.
- e. Habeas Corpus is NOT a discretionary review.
- f. Habeas Corpus is a prisoners "one and only appeal" as to ineffective assistance claims.
- g. Prisoners are generally ill-equipped to represent themselves because they have no brief or court opinion to guide them; the inherent restrictions of their confinement places them in no position to develop the evidentiary basis of ineffective assistance claim; and navigating the appellate process is a perilous endeavour.

For these reasons, it is of great public importance that this Court GRANT Certiorari to address this unanswered question.

Q. Whether Article 11.07, Section 4(a)-(c), of the Texas Code of Criminal Procedure is UNCONSTITUTIONAL as applied to Applicant's ineffective assistance of trial counsel claim when he was not provided Habeas Counsel in his Initial-Review Collateral proceeding?

Currently, in non-death penalty cases, pro se indigent prisoners are procedurally barred from presenting a claim of ineffective assistance of trial counsel if that claim could have been brought in an initial Writ of Habeas Corpus application. See, Texas Code of Criminal Procedure, Article 11.07, Section 4(a)-(c).

This statute should be held to be UNCONSTITUTIONAL as applied to pro se indigent prisoners who are not provided with habeas Counsel for their initial Habeas applications. For the bedrock principle of Gideon v. Wainwright, 383 U.S. 363 (1966) to provide meaningful protection to the indigent/accused, Counsel must be afforded to allow the presentation of ineffective assistance of trial counsel claims.

Because Texas does NOT provide Counsel for initial-review collateral proceedings, pro se prisoners are forced to litigate ineffective assistance of counsel claims on their own. the current state of the law (as explained in previous question), combined with 11.07, sec 4's procedural default, ensures the vast majority of pro se indigent prisoners have no recourse to properly learn, discover, and then litigate all their ineffective assistance of counsel claims, and thus this leaves them with no mechanism for vindicating the requirement that their counsel in Gideon be effective.

For this reason, this Court should address the question as to whether this statute is UNCONSTITUTIONAL if a prisoner is not provided the benefit of Habeas Counsel during their Initial-Review Collateral Proceeding.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: October 10, 2024