

NO.24-5994

IN THE SUPREME COURT OF THE UNITED STATES

DAVID RODRIGUEZ

Petitioner

V.

THE STATE OF TEXAS

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF TEXAS

PETITION FOR REHEARING

DAVID RODRIGUEZ
Prisoner I.D. # 02098768
Wainwright Unit
2665 Jovian M. Boulevard
Love Lady, Texas 75851

Petitioner Pro Se

LIST OF PARTIES

[X] All parties appear in the caption on the cover page.

RELATED CASES

Rodriguez v. State No. 2013-CR-8655, in The 226th District Court, Bexar County Texas, Judgment entered December 17, 2013.

Rodriguez v. State No. 04-14-00034, in The Fourth Court Of Appeals San Antonio, Texas. Judgment entered June 17, 2015.

Ex Parte David Rodriguez v. The State Of Texas No. WR-95,606-01, in The Court Of Criminal Appeals Of Texas. Judgment entered May 1, 2024.

Ex Parte David Rodriguez v. The State Of Texas No. PD-0432-24, in The Court Of Criminal Appeals Of Texas. Judgment entered July 31, 2024.

David Rodriguez v. Texas No. 24-5994, in The Supreme Court Of The United States, Washington, DC. Judgement entered January 21, 2025.

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Appendix C. Decision of The Court Of Criminal Appeals Of Texas, Ex Parte David Rodriguez v. The State Of Texas No. WR-95,606-01 Petition To File An Out Of Time Petition For Discretionary Review, Granted.

Appendix D. Decision of The Fourth Court Of Appeals San Antonio, Texas Rodriguez v. State No. 04-14-00034-CR, Affirmed.

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PETITION FOR REHEARING
AND SUGGESTIONS IN SUPPORT OF

COMES NOW David Rodriguez, Pro Se Petitioner and prays this COURT grant a Rehearing pursuant Rule 44, and thereafter grant his Writ Of Certiorari for this COURT to review the opinion of The Court Of Criminal Appeals Of Texas.

In support of Petition, Petitioner states the following;

STATEMENT OF FACTS

At the trial in question, Petitioner David Rodriguez was convicted of murder with a deadly weapon and sentenced to life with the possibility of parole in (Rodriguez V. State No. 2013-CR-8655), from the 226th District Court of Bexar County, Texas. App. E.

A direct appeal was timely filed in (Rodriguez V. State No. 04-14-00034-CR) in The Fourth Court Of Appeals San Antonio, Texas the trial courts decision was affirmed App. D.

An Out Of Time Petition For Discretionary Review was granted in (Ex Parte David Rodriguez V. The State Of Texas No. WR-95,606-01) from The Court Of Criminal Appeals Of Texas. App. C.

The Petition For Discretionary Review was Refused in (Ex Parte David Rodriguez V. The State Of Texas No. PD-0432-24), from The Court Of Criminal Appeals Of Texas. App.B.

A Writ Of Certiorari was timely filed (David Rodriguez V. Texas No. 24-5994) with this COURT, The Supreme Court Of The United States and denied. App. A.

The State alleged that on or about September 19, 2012, in Bexar

County, Texas, Petitioner with the intent to commit or attempt to commit possession of marijuana more than 50 pounds but less than 2000 pounds, Petitioner in furtherance of said act, committed an act clearly dangerous to human life, to wit, driving a motor vehicle in a manner clearly dangerous to human life, colliding with another vehicle occupied by Wesley Maspero, causing the latter's death. The indictment further alleged that the Petitioner committed or attempted to commit the felony of evading arrest or detention with a motor vehicle, and in furtherance of said act committed an act clearly dangerous to human life, towit, driving a motor vehicle in a manner clearly dangerous to human life, colliding with another vehicle occupied by Wesley Maspero, causing the latter's death. Finally the State alleged that Petitioner used a deadly weapon, a vehicle, in the commision of these offenses.

On September 19,2012 (Wednesday) a little after 3:00 pm San Antonio Police Department Officers in plain clothes and unmarked cars were conducting surveillance on location 19572 Morin Rd. Von Ormy, Texas 78073 out of their jurisdiction and with out warrents.

A cooperating source who's name cannot be revealed gave information of large quantitie's of marijuana being distributed from the property. Shortly after establishing surveillance undercover narcotics officers Gabriel Deleon Badge No. 1090, and Phillip Bourcier Badge No.0268 observed several vehicles drive into the property and drive to the rear. As the vehicles left the location they were followed by narcotics officers in plain clothes and unmarked vehicles away from the property. The narcotics officers then dispatched uniformed

officers in marked vehicles to pull over all vehicles leaving the property.

When Petitioner Rodriguez driving a black Chevrolet suburban license plate BV64950 left the property he was followed by undercover officers Michael Schaunlaub Badge No. 2440 and James Schneider Badge No. 2079 away from the property. They then dispatched uniformed officer in a marked police vehicle Kimberly Kory Badge No. 0842 to pull over Rodriguez. Kory was never given authorization to conduct a high speed pursuit by any supervising officer. Kory who was a long distance away drove at speeds up to 100 mph just to close the distance between undercover officers Schanlaub, and Schneider who were behind Rodriguez. All who were driving the correct speed limit. When Kory caught up to the undercover officers and Rodriguez her G.P.S. records show her speed dramatically decreased. Kory attempted the stop, and Rodriguez failed to stop. A short pursuit ensued. There are disputed facts at this point but what is clear is Kory lost sight of Rodriguez, and Rodriguez turned around. A major traffic accident occurred. Two child fatalities Walter Maspero, and Wesley Maspero, along with several others critically injured including Rodriguez was the result. No police officers were injured.

Rodriguez had approximately 419 lbs of marijuana in the suburban he was driving. A Dodge van pulled over after the accident bearing Florida license plate STB168 had approximately 667 lbs of marijuana

All suspects were held in custody, the property on Morin Rd. was searched and secured officers located a structure in the rear of the property with a large amount of marijuana inside, Officer

Gabriel Deleon Badge No. 1090 then applied for a search warrent and notified authorities with proper jurisdiction. The warrent was granted by Judge Crocket at 19:58 hours.

40 burlap bundles of marijuana were inside the back storage shed approximate field weight 1,683 lbs. One pound of marijuana was found under the seat of a 18 wheeler on the property.

REASONS MERITING REHEARING

The Court Of Criminal Appeal Of Texas decision is in direct conflict and/or violation with Petitioner's Constitutional Rights for the following reasons;

1.) Petitioner Rodriguez became engaged in a severe conflict of interest with both his trial attorney's Joanne Eakle and Ted Wood months prior to his trial. Some of the issues are presented on trial record that include but not limited to;

A) Petitioner's trial counsel refused to allow him to examine any Brady and/or Exculpatory evidence in his case prior to trial what so ever whether favorable to his defense or not.

B) Petitioner's trial counsel refused to file Motions on his behalf favorable to his defense, even after Petitioner requested his

counsel multiple times to file said Motions starting in April of 2013 8 months prior to trial. Furthermore refusing to sign and file said Motions to the Court after Petitioner tried to file them himself. Motions include but not limited to are; Motion To Dismiss Counsel, Motion For Continuance, and Motion To Suppress. Petitioner's trial counsel only filed said Motions when Petitioner Demanded on trial record(after Judge Sid Harle walked out of the Court room on Rodriguez) for them to do so.

C) Petitioner's trial counsel not being prepared, not going over or even knowing the basic facts of said case, not asking Petitioner if he wanted to call and/or subpoena witness's favorable to his defense.

D) Not effectively communicating with him, and/or even asking him anything about the events from September 19,2012 that led to his arrest.

E) Petitioner's trial counsel not doing anything the Petitioner asked them to do even after he gave them itemized list 3 separate times.

F) And how his trial counsel repeatedly offered the State plea deals without his consent, botching any attempt at a plea bargain and/or deal.

For the above stated reasons that are on the trial record but not limited to Petitioner Rodriguez filed four timely Motions To Dismiss Counsel on November 8th, November 12th, and November 25th, of 2013. All dismissed without a hearing or even a notification to Petitioner.

On December 9th, 2013 Judge Sid Harle even walked out of the Court room while Petitioner tried to address Judge Sid Harle and/or the

Court of the problems between him and his trial counsel, and file another Motion To Dismiss Counsel with multiple other Motions his counsel refused to file on his behalf.

Thus Sid Harle and/or the Court committed an Abuse Of Discretion, by violating Petitioners Due Process Rights, refusing Petitioner his right to be heard, refusing Petitioner notification of dismissal of his Motions, refusing Petitioner a hearing on his Motions To Dismiss Counsel as well as other Motions, and even walking out of the Court room while Rodriguez tried to address him and/or the Courts of the issues and/or problems he was having with his counsel and file Motions, without even an inkling of an inquiry. Then dismissed all Petitioners Motions without even looking at them.

Furthermore on December 9th, 2013 Joanne Eakle filed her own Motion To Withdraw As Counsel stating; " Ive lost my ability to effectively communicate with my client so that it will interfere with my ability to represent him appropriately during the course of this trial."

Sid Harle also denied this Motion without a hearing and/or inquiry.

SUGGESTIONS IN SUPPORT OF REHEARING

When reviewing the denial of a Motion To Substitute Counsel for an Abuse Of Discretion the appellate court considers the following three factors;

1.) Timeliness of Motions; 2.) Adequacy of the courts inquiry into the defendants complaints; and 3.) Whether the conflict between the defendant and his attorney was so great that it resulted in a total lack of communication preventing an adequate defense.

In reviewing habeas corpus cases, appellate court's should determine whether the constitutional trial error had substantial and injurious effect or it the influence determining the jury verdict. This harmless error annalysis applies only to trial errors and not to stuctural defects. Because structural defects infect the entire trial process, they defy harmless analysis. Consequently, structural defects require automatic reversal. Deprivation of counsel is a structural defect requiring automatic reversal.

Bland v. California Dept. of Corrections, 20 F3d 1469 (9th Cir.1994);

A defendant cannot be expected to cooperate with attorney's he believes are working behind his back to undermine his defense. Furthermore when an attorney files their own Motion To Withdraw As Counsel and states on record;

" I've lost my ability to effectively communicate with my clint so that it will interfere with my ability to represent him appropriately during the course of this trial." corroborating what Petitioner Rodriguez was trying to adrees to the Courts in **Rodriguez v. State No. 2013-CR-8655; see; Plumlee v. Del Papa, 465 F.3d 1095 (9th Cir. 2006);**

In **Brown v. Craven, 424 F.2d 1166 (9th Cir. 1970);** Brown himself made four Motions that some other attorney be appointed to represent him. The state court denied his Motions, without making no adequate inquiry into the cause of Brown's dissatisfaction with his counsel or taking any other steps which might possibly lead to the appointment of substitute counsel in whom Brown could repose his confidence. The result was Brown was forced into trial with assistance of a particular lawyer with whom he would not cooperate, and with whom

he would not, in any manner communicate.

We think however to compel one charged with a grievous crime to undergo a trial with assistance of any attorney with whom he has become embroiled in irreconcilable conflict is to deprive him of the effective assistance of any counsel whatsoever.

In *Jacobs v. State*, S.W.3d 377 (2019); it was found that the trial court Abused it's Discretion by failing to afford defendant the minimal requirments of Due Process. Trial courts have a broad discretion in how they conduct business in their courtroom and control their docket. However, a trial Judge's exercise of discretion is not unfettered and does not provide the Judge with a license to violate defendants rights to Due Process. It is incumbent for a trial Judge to maintain the honor and dignity of judiciary; uphold administration of justice for the benifit of the citizens of Texas.

In The Supreme Court Of The United States; *Lee v. Kemma*, 534 U.S., 362 ; it was considered an Abuse of Discretion when Lee's Motion For Continuance to allow time to call witnesse's was denied. Remanded. Rodriguez filed multiple Motions For Continuance on record stating his counsel was not prepared for trial, and he wanted to call witnesse's. Thus leading to his Motions To Dismiss Counsel.

Also in *Indiana v. Edwards* 554 U.S. 164; Edwards filed Motions To Dismiss Counsel, and a Motion seeking transcripts. Edwards complained in detail that the attorney representing him had not spent adequate time preparing and was not sharing legal materials for use in his defense. Remanded for Abuse Of Discretion stating the court should have allowed Edwards his Right to represent himself. In contrary to Edwards, Rodriguez at the time of his trial knew

little to nothing about law and thus could not claim his Right to self representation. Therefore Rodriguez prays this COURT take this novel situation upon it's precedent when evaluating whether the state court's and/or inferior courts application of the law was reasonable, as well as whether the state court's decision violates the general principles enunciated by The Supreme Court and is thus contrary to clearly established Federal Law.

Fundamentally;

Petitioner's Right under;

THE BILL OF RIGHTS

AMENDMENT. I.

Congress shall make no law respecting an; or abridging the Freedom of Speech; and to Petition the Government for redress of Grievance.

AMENDMENT. VI.

In all criminal prosecutions, the accused shall enjoy the right; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT. XIV.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside, no state shall make or deprive any person of life, liberty, or property, without due process of the law, nor deny any person within it's jurisdiction the equal protection of the law.

and;

THE UNITED STATES OF AMERICA'S CONSTITUTION

ARTICLE. III. SECTION 1.

The Judicial Powers of The United States shall be vested in one Supreme Court, and in such inferior courts as the congress may from time to time ordain and establish. The Judges, both of The Supreme and inferior courts shall hold their Offices during good Behaviour;

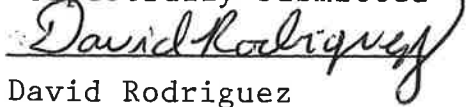
ARTICLE. IV. SECTION 2.

The Citizenz of each state shall be entitled to all Privileges and Immunities of Citizens in the several states.

CONCLUSION

For the above stated reasons Petitioner Rodriguez, prays this COURT Grant a Rehearing of it's judgement entered on the 21st day of, January, 2025. And issue a Writ Of Certiorari to properly review and rightly remand the decision of The Court Of Criminal Appeals Of Texas for failing to properly apply the Laws of this COURT. And Grant relief which has wrongly been denied to Petitioner Rodriguez for so long.

Respectfully Submitted



David Rodriguez

Prisoner I.D.#02098768

Wainwright Unit

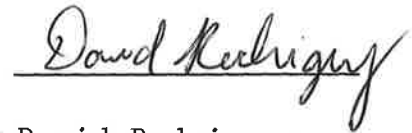
2665 Jovian M. Boulavard

Love Lady, Texas 75851

Pro Se Petitioner

CERTIFICATE OF SERVICE

I, David Rodriguez certify that on the 12 th day of, February,
2025, a true and correct copy of the above forgoing
document's a Petition For Rehearing on Petition For Writ Of
Certiorari, and Certificate Of Good Faith were sent to The Supreme
Court Of The United States, Washington,DC 20543-0001 via regular
mail.



David Rodriguez

UNSWORN DECLARATION

I, David Rodriguez Prisoner I.D. # 02098768 being presently
incarcerated in the Wainwright Unit, Love Lady, Texas, Houston
County, declare under penalty of perjury that the foregoing
instrument is true and correct signed on the 12 th day of,
February, 2025.



David Rodriguez

Prisoner I.D.#02098768
Wainwright Unit
2665 Jovian M. Boulavard
Love Lady, Texas 75851
Pro Se Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

DAVID RODRIGUEZ

Petitioner

v.

THE STATE OF TEXAS

Respondent

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, David Rodriguez and makes this certification that the following Petition For Rehearing is presented in good faith pursuant to Rule 44. Rodriguez states the following;

1. This COURT entered its Judgment denying Petitioner a Writ Of Certiorari on January 21, 2025. Petitioner believes that he presents this COURT with adequate grounds to justify granting of a Rehearing in this case and said petition is brought in good faith, and not for delay.

Furthermore, Petitioner believes that based upon the LAW of this COURT, and the facts of this case, Rodriguez said Petitioner believes he is entitled to relief which has been unconstitutionally and unjustly denied to him as a United States Citizen. He further believes that if The Court Of Criminal Appeals Of Texas are continually allowed to not address and/or correct violations of United States Citizens Constitution Right to Due Process, not only for the multitude of past violations but for a future where the number of United States Citizens denied their Constitutional Right to Due Process will continue to grow. Where untold numbers of United States Citizens will be deprived of life, liberty, and

property without Due Process of the law.

I declare under penalty of perjury that the foregoing instrument is true and correct.

Executed on this 12 th day of February, 2025.

David Rodriguez
Prisoner I.D. # 02098768
Wainwright Unit
2665 Jovian M. Boulavard
Love Lady, Texas 75851

David Rodriguez

CERTIFICATE OF SERVICE

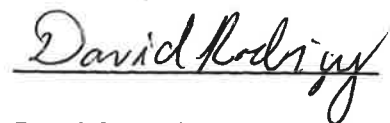
I, David Rodriguez certify that on the 12 th day of, February,
2025, a true and correct copy of the above forgoing
document's a Petition For Rehearing on Petition For Writ Of
Certiorari, and Certificate Of Good Faith were sent to The Supreme
Court Of The United States, Washington, DC 20543-0001 via regular
mail.



David Rodriguez

UNSWORN DECLARATION

I, David Rodriguez Prisoner I.D. # 02098768 being presently
incarcerated in the Wainwright Unit, Love Lady, Texas, Houston
County, declare under penalty of perjury that the foregoing
instrument is true and correct signed on the 12 th day of,
February, 2025.



David Rodriguez
Prisoner I.D.#02098768
Wainwright Unit
2665 Jovian M. Boulavard
Love Lady, Texas 75851
Pro Se Petitioner

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