

No. 24-6042

In The
Supreme Court of the United States

DAVID LEONARD WOOD,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

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

PETITIONER'S REPLY BRIEF

**DAVID WOOD IS SCHEDULED
TO BE EXECUTED ON MARCH 13, 2025.**

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TABLE OF CONTENTS

1.	The State has not met its burden to show mootness.....	1
2.	David Wood’s appeal to the TCCA was procedurally proper.	4
CONCLUSION		7

TABLE OF AUTHORITIES

Cases

<i>Aetna Life Ins. Co. v. Lavoie</i> , 475 U.S. 813 (1986)	4
<i>Caperton v. A.T. Massey Coal Co.</i> , 556 U.S. 868 (2009)	4
<i>DeFunis v. Odegaard</i> , 416 U.S. 312 (1974)	2
<i>Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.</i> , 528 U.S. 167 (2000)	1, 2
<i>Gamez v. State</i> , 737 S.W.2d 315 (Tex. Crim. App. 1987)	5
<i>Gulf Mar. Warehouse Co. v. Towers</i> , 858 S.W.2d 556 (Tex. App. – Beaumont 1993)	5
<i>In re Union Pac. Res. Co.</i> , 969 S.W.2d 427 (Tex. 1998)	2, 5
<i>Lee v. State</i> , 555 S.W.2d 121 (Tex. Crim. App. 1977)	2
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)	1
<i>Taylor v. Hayes</i> , 418 U.S. 488 (1974)	4
<i>United States v. Concentrate Phosphate Export Assn.</i> , 393 U.S. 199 (1968)	2
<i>Williams v. Pennsylvania</i> , 579 U.S. 1 (2016)	4

Statutes and Rules

Tex. Code Crim. Proc. art. 64.03(a)	3
Tex. R. Civ. Proc. 18a(j)(2)	6

Other

Tex. Const. art. V, § 5, cl. a	3, 5
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PETITIONER'S REPLY BRIEF

The State's arguments that this Court should deny certiorari are not compelling. First, the State has not met its burden to show that the judicial bias issue is moot. Second, David Wood's appeal to the Texas Court of Criminal Appeals (TCCA) was procedurally proper.

1. The State has not met its burden to show mootness.

The State argues that David Wood lacks standing because, in light of the opinion below, a favorable decision from this Court would not redress David Wood's injury. State Br. 11. But this argument misunderstands the concept of standing. Standing is "the requisite personal interest that must exist *at the commencement of the litigation*["] *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 189 (2000) (emphasis added). It is determined at the moment suit is filed, before any appeals. *Id.* While the State purports to challenge David Wood's standing, the State does not argue that his injury was not redressable at the time he moved to disqualify Judge Richardson.¹ The TCCA's opinion—the basis of the State's argument—is irrelevant to David Wood's standing because his standing is determined at the time he filed suit, not after the conclusion of his appeal.

¹ When David Wood moved to disqualify Judge Richardson, he plainly had standing. Standing requires that a party has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). David Wood's injury—the violation of his due process right to an impartial judge—was caused by the court's refusal to disqualify Judge Richardson, and is redressable by Judge Richardson's removal and the appointment of an unbiased judge.

What the State incorrectly frames as a standing issue actually concerns mootness, the requirement that a live controversy exist through all stages of litigation. *See DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974). But unlike with a challenge to standing, “[t]he ‘heavy burden of persua[ding]’ the court” that a case is moot “lies with the party asserting mootness.” *Friends of the Earth, Inc.*, 528 U.S. 167, 189 (2000) (quoting *United States v. Concentrate Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)). By cloaking its mootness argument in the guise of standing, the State aims to shift its burden onto David Wood. *See* State Br. 12 (“Wood does not suggest how a favorable decision would redress any alleged injury to him.”).

The State has not met its burden to prove this case is moot. The State argues that, even if this Court found Judge Richardson disqualified, its decision would not redress the injury because this Court’s decision would leave the TCCA’s denial of DNA testing in place. State Br. 10–13. This argument is wrong. The TCCA’s decision on appeal could not withstand this Court’s holding that Judge Richardson was disqualified.

If Judge Richardson was disqualified, then the TCCA lacked jurisdiction on appeal. Under Texas Law, the disqualification of a trial court judge negates the trial court’s jurisdiction, *Lee v. State*, 555 S.W.2d 121, 122 (Tex. Crim. App. 1977), so that “any orders or judgments rendered by a judge who is constitutionally disqualified are void and without effect.” *In re Union Pac. Res. Co.*, 969 S.W.2d 427, 428 (Tex. 1998). The TCCA has no original jurisdiction, only appellate jurisdiction. Tex. Const. art. V,

§ 5, cl. a. So, if Judge Richardson lacked jurisdiction and his decisions were without effect, the TCCA also lacked jurisdiction on appeal. If this Court holds Judge Richardson disqualified, the TCCA's decision must fail for lack of jurisdiction.

Besides the jurisdictional problem, only a remand could redress the violation of David Wood's due process rights. The State's argument for mootness is circular: It proposes an ineffectual remedy—leaving the TCCA's decision in place—then argues the case is moot because that remedy is ineffectual. If this Court holds Judge Richardson disqualified, the remedy is not to leave the TCCA's denial of DNA testing in place, which—as the State itself acknowledges—would fail to redress the injury to David Wood's due process rights. Instead, the remedy is to vacate the TCCA's decision and remand the case for new proceedings before an impartial judge. If Judge Richardson is disqualified, a remand for new trial-level proceedings before an impartial judge is necessary to redress the due process violation because David Wood was denied the chance to convince an impartial judge to order DNA testing.

A trial judge is authorized to order DNA testing upon finding that certain elements are met. *See* Tex. Code Crim. Proc. art. 64.03(a). The denial of DNA testing in this case was not a foregone conclusion. No biological evidence tied David Wood to any of the killings. Pet. 4. And when David Wood initially sought DNA testing, the State did not oppose it, and the trial court ordered testing of three pieces of evidence. *Id.* at 11. The testing on a piece of clothing from a female victim revealed male DNA that was not David Wood's. *Id.* If subsequent DNA testing found a redundant DNA

profile on evidence from a different crime scene, David Wood would not have been convicted because the contributor of that DNA would almost certainly be the real perpetrator. In that context, Judge Richardson denied DNA testing. But upon remand, an impartial judge might well find the evidence sufficient to order DNA testing. To redress Judge Richardson's disqualification, it is essential that David Wood have the opportunity to make his case for DNA testing before an impartial trial court judge.

Since a remand for new proceedings would remedy the due process violation, this case is not moot. When this Court has found judges disqualified, it has consistently remanded the cases for new proceedings. *See e.g., Williams v. Pennsylvania*, 579 U.S. 1, 17 (2016) (vacating and remanding); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 890 (2009) (reversing and remanding); *Taylor v. Hayes*, 418 U.S. 488, 504 (1974) (reversing and remanding); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 829 (1986) (vacating and remanding). The State gives no good reason the Court should not remand this case as well if it finds Judge Richardson disqualified. And because remanding the case for new trial-court proceedings before an impartial judge would redress the violation of David Wood's due process rights, the State has not met its burden to show this case is moot.

2. David Wood's appeal to the TCCA was procedurally proper.

The State argues that this Court should deny certiorari because David Wood's appeal to the TCCA was procedurally improper. State Br. 13–15. The State admits

that David Wood followed the correct procedure to move for disqualification, State Br. 14, but takes issue with how David Wood appealed the denial to the TCCA. The State struggles to explain why this Court should accept its arguments about Texas procedure, when the TCCA already rejected these same arguments and reached the merits of Judge Richardson’s disqualification in its decision. Indeed, because the issue is a matter of Texas law, the TCCA’s determination on this point is final. *See* Tex. Const. art. V, § 5, cl. a (The TCCA’s “determinations shall be final, in all criminal cases of whatever grade,” with narrow exceptions.). And regardless, David Wood’s appeal was procedurally proper.

Under Texas law, disqualification can never be waived, and a judge’s disqualification can be raised at any time. *Gamez v. State*, 737 S.W.2d 315, 318 (Tex. Crim. App. 1987). Disqualification “survives silence” and requires no “procedural tiptoeing.” *Gulf Mar. Warehouse Co. v. Towers*, 858 S.W.2d 556, 560 (Tex. App. – Beaumont 1993). This flexibility is necessary because a court with a disqualified judge lacks the force of law—its orders and judgments are absolutely void. *In re Union Pac. Res. Co.*, 969 S.W.2d at 428.

After David Wood filed his motion to disqualify Judge Richardson, the regional presiding judge denied the motion in a one-page order providing no reasoning. Pet. App. G. David Wood then sought leave from the TCCA to file a petition for writ of

mandamus. On July 26, 2017, the TCCA, without written order, denied leave to file. *In re David Wood*, WR-45,746-03.²

At this point, no court had addressed the merits of David Wood’s motion to disqualify Judge Richardson or provided any reasoning to suggest Judge Richardson was not disqualified. Nonetheless, the State seemingly argues that David Wood had already exhausted all avenues for relief and had no way to appeal the order denying his motion to disqualify Judge Richardson. That is incorrect.

Rule 18a(j)(2), states only that an order “denying a motion to disqualify may be reviewed by mandamus and may be appealed in accordance with other law.” Tex. R. Civ. Proc. 18a(j)(2). To give effect to the words, “and may be appealed in accordance with other law[,]” mandamus cannot be the only way to appeal. After the TCCA denied David Wood’s petition for a writ of mandamus without a written order, David Wood appealed the issue the only way he could, in accordance with other law. And the TCCA agreed that the appeal was procedurally proper because it rejected the same arguments the State makes here and addressed the merits of the disqualification issue. Because David Wood’s appeal was procedurally proper and the TCCA already rejected the State’s procedural argument in a final determination, this Court should not buy into the State’s procedural quibbling as a reason to deny certiorari.

² Docket available at <https://search.txcourts.gov/Case.aspx?cn=WR-45,746-03&coa=coscca> (last visited Feb. 1, 2025).

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, this Court should grant the petition.

Respectfully Submitted,

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