

No. 24-6115

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
OCT 22 2024

OCT 22 2024

OFFICE OF THE CLERK

Hector Martinez Perez — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Hector Martinez Perez
(Your Name)
Memorial Unit,
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Rosharon, Texas - 77583
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—
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QUESTIONS PRESENTED FOR REVIEW

QUESTION #1: Is Texas' application of Tome v. United States unconstitutional, or wrong where (1) Texas found four-point analysis of Tome applicable to the case; (2) Texas claims the error does not violate a constitutional right; whereas (3) SCOTUS stated in Tome Prior Consistent Statements are substantive evidence under rule 801; and (4) statutory construction of rule 801(d)(1)(B) increases State interests in finality and comity at the expense of my federal due process rights?

QUESTION #2: Is Texas unconstitutionally increasing their interests in finality and abusing comity at the expense of citizens' right to due process where (1) SCOTUS found in Trevino v. Thaler that the Constructions and procedural framework in Texas do not afford meaningful review of ineffective counsel claims on direct review; (2) a citizen loses presumption of innocence and many civil rights after direct review; and (3) State's refusal to entertain I.A.C. claims until Habeas review raises the burden of proof for petitioners while decreasing the State's burden?

PARTIES TO THE PROCEEDINGS

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CERTIORARI

State Cause No.1740511

Direct Appeal No.02-23-00218-CR

Post Discretionary Review No.PD-0308-24

RELATED CASES

Peralez v.State, 2024 Tex.App.LEXIS 2912(Tex.App.Ft.Worth April 25, 2024)

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LIST OF PROCEEDINGS IN STATE COURT

TRIAL COURT: 213th court room of Tarrant County>> Case No. 1740511>>

Judgment entered August 05, 2022.

DIRECT APPEAL: Court Of Appeals, second District of Texas at Fort Worth>> Case No 02-23-00218CR>>Decided April 25, 2024.

POST DISCRETIONARY REVIEW: Court of Criminal Appeals, Austin, Texas>> Case No.PD-0308-24>> Decided July 31, 2024.

BASIS OF JURISDICTION

Supreme Court of the United States may review on Certiorari the judgment rendered by the highest State Court pursuant to 28 USC §1257.

Time for filing Certiorari expires on October 28, 2024, which is ninedy days from the date of the Court of Criminal Appeals' decision entered July 31, 2024.

The statutory provisions conferring jurisdiction on this court to review on Certiorari the judgement and order in question are:

(1) S.Ct.Rule 10(c): State of Texas has decided "an important question of federal law that has not been, but should be, settled by this Court", where the holding in Trevino v.Thaler supports the notion that Due process demands development of the record before final disposition of an appellant's I.A.C. claims.

(2) S.Ct.Rule 10(c) Texas has "decided an important federal question in a way that conflicts with" This Court's decision in Trevino v.Thaler, namely they are still placing all IAC claims into procedural default, and increasing their interests in finality at the expense of our due process rights.

(3) 28 USC § 1257: Says Certiorari may issue to review the decisions of the highest State court when a federal right is drawn into question or a State statute is shown to be unconstitutional. It is also in the public's interests that this petition should issue where it is our rights to due procees that are being curtailed by State Construction and procedural framework, practices that were condemned by SCOTUS in Trevino.

STATEMENT OF THE CASE

This is an actual innocence case, where the defendant has already been acquitted of count one as charged in the indictment. The state's accusations include sexual assault of a child under fourteen years of age by (1) oral sex, and (2) finger contact of the sexual organ.

Because the defense witness was illegally impeached the jury was robbed of vital evidence of innocence: the testimony of the victim's grandmother. The grandmother testified, as to the alleged oral sex in the bathroom, that she did not see anything happen. The victim claimed the grandmother saw the incident. This was vital evidence of innocence because the jury did not believe the allegations as to count one, so they acquitted the defendant. It is more than likely they would have acquitted defendant of count two also. Who is to say the whole case would not have been thrown out for fabrication?

Regarding the impeachment evidence, the Court of Appeals for Texas found that the four point analysis in Tome v. United States applied to the facts of this case. Yet, contrary to SCOTUS holding in Tome, the Court of Appeals erroneously held that the Prior Consistent Statement of innocence, even if erroneously withheld from the jury, was harmless because such withheld evidence does not amount to the deprivation of a constitutional right. SCOTUS said in Tome such evidence is always substantive under rule 801. And substantive is synonymous with constitutional.

The defendant has a viable claim to actual innocence in conjunction with claims of ineffective counsel, prosecutorial misconduct, unfair trial, and improper jury instructions. Texas practice of deferring claims of ineffective counsel to Habeas proceedings, impermissible increases State interests in finality at the expense of the due process and equal protection rights of United States Citizens.

ARGUMENTS

QUESTION #1: Is Texas' application of Tome v. United States unconstitutional, or wrong where (1) Texas found four-point analysis of Tome applicable to the case; (2) Texas claims the error does not violate a constitutional right; whereas (3) SCOTUS stated in Tome Prior consistent Statements are substantive evidence under rule 801; and (4) statutory construction of rule 801(d)(1)(B) increases State interests in finality and comity at the expense of our federal due process rights?

STANDARD OF REVIEW: Tome v. United States, 513 U.S. 150, 156-58, 160-61

ARGUMENT: Texas has conceded that all four points in Tome's analysis apply to the facts of the case [See Peralez v. State, 2024 Tex.App.LEXIS 2912 at *9-11].

As to point four the Court said "we will assume, without deciding, that the Trial Court abused its discretion by excluding the proffered portion of the recorded interview [Id. at *11].

The Court goes on to claim that the error of not admitting grandmother's Prior Consistent Statement-- that defendant was innocent-- is not a constitutional error, and had no substantial and injurious effect on the jury's verdict [Id. at *11].

Please recall, the Court found all four points applicable to the case, specifically "there was an implied charge of recent fabrication or improper influence" by the State when they impeached the witness [Id. at *11]. This finding is contrary to the State's claim that they impeached the witness for bolstering. More importantly, aside from finding that the State was working in bad faith, the finding of this type of error was subjected to a harm analysis that includes a showing that the excluded evidence must violate a constitutional right. There is no such showing when the State objects to an impeached State witness. Furthermore, SCOTUS said this type of witness testimony is substantive evidence and I will show, a constitutionally protected safeguard of due process:

"Prior Consistent Statements traditionally have been admissible to rebut charges of recent fabrication or improper influence or motive, but not as substantive evidence. Under the rule they are substantive evidence. The prior statement is consistent with the testimony given on the stand, and, if the opposite party wishes to open the door for its admission in evidence, no sound reason is apparent why it should not be received generally." Tome, 513 U.S. at 161

SCOTUS clearly said this testimony is not just an exception under the hearsay rule, it is substantive, and in this case, evidence of innocence. This is the victim's grandmother claiming the defendant is innocent of any act performed in the bathroom. There is harm in its exclusion:

(1) The State allowed the grandmother to give her testimony on the stand, proclaiming defendant's innocence BEFORE the State impeached her. In the eyes of any reasonable juror I would have disregarded grandmother's assertions of innocence in the face of her successful impeachment;

(2) As to substantive evidence, this goes to our fifth amendment right to a fair and impartial trial by an arbitrary tribunal. The Court of appeals found that the State's impeachment was for reasons the State has denied. This is a finding that the State was working in bad faith at trial, and appellate review. It's an underhanded abuse of power unworthy of elected officials.

(3) The State's bad faith, and the Trial Court's abuse of discretion amount to a violation of federal due process which is applicable to the States via the fourteenth amendment of the U.S. Constitution.

The Texas Court of Criminal Appeals held that the impeachment of the victim's grandmother violate no constitutional right, which is clearly a holding tantamount to saying we have no right to federal due process.: The type of evidence in contention by itself implicates our constitutional rights, said SCOTUS in Tome, at 161. Thus, the fact that Texas conceded each point applied to the facts of the case implies that they are okay with withholding substantive ~~evidence~~ of innocence. Is SCOTUS okay with that ? How can the public have confidence that their rights will be respected if they were to run into trouble while traveling through Texas? The public has an interest in the outcome of this case which is why SCOTUS should grant certiorari to answer the federal question Texas has contrarily decided.

The Court of Criminal Appeals also found the jury instruction to be erroneous but because trial counsel failed to object, and because appellate counsel did not raise ineffective counsel in this regard, the Court conducted a more stringent harm analysis of this error. And its harm analysis did not consider or include counsel's performance on this issue because appellate counsel failed to raise it. But Trevino says these grounds are not forfeited just because appellate counsel was also ineffective.

The point is this: The Court's harm analysis favors finality, and this is the procedural framework in Texas at work. The Court , in its analysis , conveniently skipped prong #2 of its non-discretionary, mandatory, constitutionally protected harm analysis: "the state of the evidence, including contested issues and weight of probative evidence. See Peralez, at *17-21(opinion by J.Womack).

The vital contested issue the Court's analysis did not include in its analysis is the contested issue of the grandmother's impeached testimony. The analysis says the Court must include the probative value of the grandmother's testimony, and the court did not [See Peralez, at *17-21].

The grandmother's testimony was vital in the jury unanimity instruction because the jury must be unanimous in identifying which incident they believe is the predicate event to support their finding of guilt. And since the victim claims the bathroom is the only place where oral sex occurred the grandmother's testimony is vital to discounting the bathroom as the predicate event where the alleged assault occurred.

Thus, the jury's verdict for count two cannot stand where they were required to identify the event, and the grandmother's testimony sheds reasonable doubt on what really happened in the bathroom. This is not harmless. This is not fair. This is not equitable.

CONCLUSIONS The State is working in bad faith as exhibited by their impeachment of the victim's grandmother. Defendant was acquitted of count one. What would this set of jurors have done had they been presented with the grandmother's testimony?

The unconstitutionality of the State's application of Tome hinges upon the incomplete analysis of how the grandmother's testimony would have changed the outcome of the case. It is clear that the State did not include the grandmother's testimony in their harm analysis. SCOTUS said such testimony is SUBSTANTIVE, and substantive is always synonymous with constitutional rights. Thus, the State has removed a constitutional safeguard in their analysis, and the Trial.

We have a case of prosecutorial misconduct where the prosecutor worked in bad faith by misusing rule 801 to exclude evidence that has been shown to be evidence of innocence. At this stage of the proceedings it is Brady material .

The Trial Court abused its discretion by impeaching the witness, and by giving an erroneous jury instruction-- both of which are errors of constitutional proportions.

The circuits do not raise the burden of proof for State witnesses when it is in State interests to rehabilitate witnesses impeached at trial [United States v. Jahagirdar, 465 F.3d.149[12](1st Cir.); Evans v. Fischer, 712 F.3d.125 n.4 (2nd Cir.); United States v. Muhammad, 512 Fed.Appx.154 at 166 (3rd Cir.) etc.].

Why then is the Court allowed to burden the defense with a burden not placed on the State? SCOTUS said such evidence is substantive in this case.

This procedural framework and practice in Texas is not equitable or fair and represents State interests in finality moreso than the procedural safeguard it was intended to be. This practice increases State interests at the expense of OUR rights without knowing and intelligent consent of the People.

Texas found Tome applicable to the case, yet added a showing not found in Tome. Texas misapplication of Tome is not an isolated case, but is the procedural practice of increasing State interests in finality. It is in the public's interests to grant certiorari to ensure the public that their rights are not being curtailed or manipulated by Statutory construction, or the procedural frameworkings of the State. It is not secret Texas favors finality and comity, but it should not be at the expense of our rights to due process of law.

QUESTION #2: Is Texas unconstitutionally increasing their interests in finality and abusing Comity at the expense of citizens' right to due process where (1) SCOTUS found in Trevino v. Thaler that the constructions and procedural framework in Texas do not afford meaningful review of ineffective counsel claims on direct review; (2) a citizen loses presumption of innocence and many civil rights after direct review; and (3) State's refusal to entertain I.A.C. claims until Habeas review raises burden of proof for petitioners while decreasing the State's burden?

STANDARD OF REVIEW: Trevino v. Thaler, 569 U.S. 413; In re Winship, 397 U.S. 358

ARGUMENT: Texas still undermines SCOTUS holding in Trevino v. Thaler, wherein SCOTUS made the case why statutory Construction in Texas is an impediment to filing federal appeals. Here the case is made for why it is also an impediment to federal due process and equitable interests of the fourteenth amendment.

Other than a motion for new trial, Texas rules of Appellate procedures have no statute for developing the record on direct review for claims of ineffective counsel. The problem with this is that finality of the case takes away the appellant's right to the presumption of innocence, innocent until proven guilty, right? That is a big constitutional right, and with that right goes with it many civil rights, like the right to an attorney for the poor, the right to expert representation and investigators, the right to vote for prison reform, Trump or Kamala. For a person that maintains their innocence this Presumption is a constitutional right that was never waived by, for instance, plea bargaining. Plea bargaining happens in about 90% of cases now. The problem is that when the State denies an ineffective counsel claim by claiming the record is not developed, the State is in essence and fact, taking away a constitutionally protected right that we never waived-- the presumption of innocence.

If a homeowner received notice that the state had a lien on their property without any legal standing, and then the homeowner's house were seized and their equity taken, that is robbery by any definition.

We have a valid equitable interest in liberty and Texas takes away our interest without any bargaining, concession, or secured waiver. That is robbery, my friends, under any definition. I will show how equitable interests represent constitutional safeguards, and how constitutional safeguards are synonymous with due process of law. Please read In re Winship, 397 U.S. 358 [6].*

By skipping over I.A.C. claims on direct appeal and P.D.R. Texas skips over our constitutional safeguards of due process. A presumption of innocence carries a burden of proof for the State-- proof beyond a reasonable doubt. And that burden of proof is a constitutional safeguard [In re winship, at HN[6]]. The burden of proof gets harder for petitioners on habeas corpus-- preponderance of evidence, right? In Habeas Court, gone is our presumption of innocence and the petitioner must prove the existence of some constitutional violation.

The State increases their interests in finality with the new presumption of guilt:

(1) Presumption of guilt carries with it the assumption that the trial was free of non-harmless constitutional error. It is so because that is what the burden of proof is for the habeas petitioner;

(2) Because many civil rights are taken from the indigent petitioner, gone also is the costly right to a full and fair evidentiary hearing. A perfect example is Belmont v.State, 2012 Tex.Crim.App.LEXIS 1334.

The Trial Court found merit to Belmont's I.A.C. claims and conceded the necessity of a hearing. But since Belmont had no civil right to one the Trial Court resolved the matter by ordering affidavits.

In Trevino v.Thaler SCOTUS touched upon all the reasons why the procedural framework in Texas is insufficient to give petitioners the forum and ability to present meaningful I.A.C. claims. But what SCOTUS did not touch upon in Trevino is the interplay between the equitable interests of the parties in the case and how Statutory construction can adjust those interests: How does Construction affect the rights of the parties? How does a burden of proof safeguard my rights?

Which is why I ask for certiorari. Let's talk about how the State did not foresee how failure to develope the record indirectly, yet potently, takes away substantive rights of its citizens without consent. Let's give Texas a chance to safeguard federal due process by granting certiorari.

Texas cannot claim scarce judicial resources prevent them from developing the record on appeal. With just ten percent of appellants who go to trial, should not they who maintain their innocence be given a right that represents their equitable interests at that stage of the proceedings? Burdens of proof are equitable interests, and equitable interests are constitutional safeguards. Therefore,

there is no constitutional safeguard in place to protect my equitable right to due process, which I never waived, as evinced by my plea of not guilty and insistence on going to trial.

Conclusion: There is no statutory provision in place that represents the equitable interests of those people who maintain their innocence and defend their presumption of innocence-- which is the backbone and sinew that the judicial system is built around.

Should not an appellant who maintains his innocence have more rights conferred upon him than an appellant who pleads guilty and loses the right to appeal? Texas rules of appellate procedures do not have sufficient constitutional safeguards in place to represent the equitable interests of the appellants who still have their presumption of innocence ~~ON~~ direct appeal.

The appellate court could simply order the record to be developed and abate adjudication of the claim until the record is before the court.

Texas' practice throws the burden on the federal government to develop the record, hold evidentiary hearings, issue findings and conclusions. Why should an innocent person have to wait years to restore his civil rights in federal court via Federal 2254?

The innocent never waived his civil rights or his presumption, Texas stole them. Why then is the innocent forced to fight through a gauntlet of bifurcated proceedings just to get back what he never waived away? Something has to change.

Texas is increasing their interests in finality at the expense of federal due process of law.

REASONS FOR GRANTING CERTIORARI
PRAYER

Supreme Court Rule 10(c) says SCOTUS may grant Certiorari to review State decisions that purport to answer that which only SCOTUS has the authority to decide: a federal question. This same rule also vests This Court with jurisdiction to review decisions that are contrary to supreme court holding. Trevino v.Thaler and Tome v.United States are the holdings that Texas has attempted to overrule, and its rationale for doing so does not rest upon independent State law, but offends federal due process and equal protection of the law.

This is an actual innocence case where the defendant has already been acquitted of one count. Who is to say the jury would not have reasonable doubts if they had been presented with the grandmother's testimony?

Habeas petitioners who have pled guilty should have less statutory safeguards in place that represent their equitable interests. The problem in Texas on appellate review is that when the State denies review of I.A.C. claims they in essence take away all the rights that distinguish them from those who have pled guilty. And with no distinction towards appellants still presumed innocent the Texas rules of evidence are not sufficient safeguards to the equitable interests of the innocent.

The holding in Trevino v.Thaler supports the notion that if SCOTUS were to turn their minds to the interplay between State Constructions and equitable considerations they will conclude that state constructions operate inadvertently, yet potently, to subvert the federal rights to due process without knowing and open consent of those who maintain their innocence.