

24-6153

Donald Ray Malena Pro Se

v

Eric Guerrero, Dir. TDCJ
Respondent

IN THE
SUPREME COURT OF
THE United States

Petition For Rehearing of
Writ of Certiorari - 24-6153

To the Honorable Justice of said Court;

Comes now Donald Ray Malena, petitioner to move the Court with this, Petition for Rehearing, Petitioner seeks this Rehearing pursuant to Rule 44 that he may present a closer focus on the issues, to clothes them with merit, to establish his ~~Constitution~~ Constitutional Rights has been violated;

The issues mentioned in the petition for Writ of Certiorari are the blame worthy, to demonstrate my Constitutional Rights have been violated/denied.

The Rehearing will open an opportunity to Revisit the issues with supporting evidence; Petitioner makes a diligent Request for 28 USC § 2304(3) be applied, to support the Request ^{to} ~~for~~ the state for Discovery and investigation to ensure the evidence is obtained.

P147

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SUPREME COURT, U.S.

Ground (1) Unreasonable Seizure:

On March 5, 2022, I was stranded (out of gas) on the shoulder of the Road, with the absence of any exigent circumstances or outstanding warrants, I was contacted by the Arlington, Texas police department. I explained to the officer why the car was parked on the side of the Road which, according to the statute of Texas, Texas Transp. Code Ann. c 545, 058(a) 1+7; "Whenever a police officer accosts an individual and restrains his freedom to walk away, he has seized that person" and the fourth Amendment require that the seizure be reasonable," Brown v. Tex., 443 U.S. 47 (the Court Reversed). The car was parked lawfully, the seizure violated the fourth Amendment of the United States Constitution, the 14th Amendment and illegal.

Ground (2) Evidence obtained in violation:

March 5, 2022; After more officers arrived, a custodial interrogation was conducted, within the questioning the officer failed to administer the Required Miranda Warnings to violate the fifth amendment of the United States Under, Miranda v Arizona, 384 U.S. 436. I Rebe

#TDCS

O. Malena-2408951- Petition for Rehearing-Writ of Certiorari-24-653 P2/1

On DR v Elstad, 470 U.S. 298, also see, Orozco v Tex,
394 U.S. 324; Violated Vernon's Ann. Tex. Code of Crim. Proc.
Art. 38.22 Sec. 3(a) 1+2, To obtain the statement without the
Required Miranda warning, Violated petitioner's Fifth
Amendment Right and 14th Amendment due process clause and
the Texas Constitution Art. I, Sec. 10.

28 USC § 2403(b) may apply, because, the video will
substantiate this ground. The custodial interrogation without
the administration of the Miranda Required warnings,
Violated my Fifth and 14th Amendment Right of the U.S.
Constitution.

Ground (3) Ineffective Assistance of Counsel;

Counsel and prosecutor were in possession of the videos
produced on March 5, 2022 that demonstrated the evidence
obtained on March 5, 2022.

Counsel being in possession of those videos, failed to
investigate various aspects of the case to defend against
the prosecutor's case, to establish the legitimacy of the
indictment. Had Counsel investigated, he would have
discovered that there were no admissible evidence
submitted.

The information page (see Exhibit (10) only ^{does} states (that he has good reason to believe and ~~do~~ believe) because of a July 6, 1981 DWI Conviction 41 years prior to March 5, 2022 only to be modified in the indictment to the June 27, 1986, a Conviction 36 years prior to March 5, 2022. These convictions are too remote under the 1983, 68th Leg. R.S. Ch. 1983 Tex. Gen. laws 1574, 1576, Codified as Texas Penal Code 49.09(c) which, was Repealed Sept. 1, 2005, going forward. However, there is no explicit statement in the House Bill 51 (HB51) permitting past convictions can be retrieved for enhancement a 14th amendment due process violation and makes the indictment defective see Exhibit (11) and to present it in the court, divests jurisdiction of the court, to make the judgement on Aug. 22, 2022 void and illegal. Counsel did nothing to defend against the prosecutor's case. The (HB51) Saving Clause; Does explicitly state, "For an offense under Chapter 49 penal code that was committed before the effective date of this Act (Sept. 1, 2005) is covered by the law that was in effect when the offense was committed and the former law is continued in effect for that purpose."

to mean that, The 1983, 68th Leg. R.S. C3 1983, Tex. Gen. laws 1674, 1576, Codified as Texas Penal Code 49.09(e) that the 1986 Conviction is Covered, Restricts the use of convictions that are over 10 years before the instant offense.

~~Court~~ Counsel's deficient performance to defend against these issues caused me harm to be placed in an illegal sentence, to violate the sixth and 14th amendment of the United States Constitution. 28 USC § 2304(3) may apply to this issue of Record.

GROUND (4) No Response from opposing party:

After, I applied for the 22.54 Habeas Corpus, I received a ~~Ref~~ Response from Counsel for the state Attorney General's office Mr. Nathan Tadena to answer my ~~an~~ application brief for post-Conviction Relief via 22.54. The application for 22.54 Relief was denied Nov. 22, 2023, ⁴23 CV-000820. and (C.O.A.)

I gave notice of Appeal, and received a Response from Nathan Tadena, Counsel for Bobby Lumpkin, Dir. TDCJ
See Attachment 1 & 2.

I filed the Required Motion and supporting brief to be granted C.O.A.

^{ATTACHED}
D. Malena-2408951-Petition for Rehearing-Writ of Certiorari-24-6153

On Sept. 18, 2023, There were no Response from ~~the~~ Mr Tadena,
no opposition or answer brief until, Dec. 13, 2023 with the
Notice of Appearance of Counsel at which Time, ~~he~~
There were no Compliance to USCS Fed Rules App. Proc.
R31 (See Attach 1 & 2) a Reversible error and 14th amendment
Violation. No more Response until after the denial of my
application for ~~Certifiability~~ ~~of~~ A Certificate of Appealability
(COA) March 7, 2024.

I Received forms from the Court to mailed to Mr Tadena
for his Response with instructions for a brief from him
appear on the Court's Website by Jan. 15, 2025. I never
Received a copy to alert me Mr Tadena did not respond
to the instructions.

The latter Conduct; no Response from the opposing party's
Counsel, no service of their opposition, brief to me, no
presentation of any evidence, name being changed on
petition and being denied without explanation are errors
for Reversible, Remand or dismissal, a violation of
the 14th amendment, due process and equal protection
clause and to hold petitioner in Confinement without

Substantiating proof, is a 8th amendment violation

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The Rehearing of the Writ of Certiorari is
necessary that the issues therein can be manipulated
to establish their merit and that ^{will} produce the fact
there is no evidence to support a felony confinement.

Petitioner prays that the Honorable Justice will,
after Review of these issues, conclude, there has been
the denial of his Constitutional Right.

Submitted this day of March 21, 2025

Respectfully Submitted

Donald Ray Malena - Pro Se

Donald Ray Malena - Petitioner

TDCJ #2408951

Donald Ray Malena
Pro Se

ERIC GUERRERO, DR. TDCJ
Respondent

24-6153

IN The
Supreme Court of The
United States

To Prosecuting Attorney For The State of Texas

Comes Now Donald Ray Malena, Defendant in the
above-entitled and number Cause by and through pro se
and pursuant to Article 39.14 of the Texas Code of
Criminal Procedure the Texas Rules of Evidence and
Beady v Maryland, 373 U.S. 83, 87 (1963),

USCS Fed Rules Crim Proc - Rule, Makes this
Self-executing Request to the attorney for the State
of Texas to give, in proper form, to Defendant the
following: #1721633A I

- 1) The Real statement video or a print out of the
custodial interrogation March 5, 2022
- 2) The Dash-Cam video of Defendant sitting in
or operating car and Police Report
- 3) All admissible evidence ~~also~~ obtained March
5, 2022

II

In support of this Request, the defendant in good
faith and not for the purpose of delay states, that
the Requested items are material in that, they are
necessary to support innocence and substantiate
my sentence illegal or legal

It is the defendant's good-faith belief that the Requested items are in the possession of the state or one of its agencies for the following Reasons:

1) The defendant has personal Recollection of giving a statement to a member of the Arlington, Police Department which, was subsequently reduced to writing.

2) The attorney for the state knows or through due diligence could know that the items exists.

3) The state has used the item in its Case-in-Chief as evidence (see Exhibit 8, Finding and Verdict) of the Petition for Certiorari, #24-6153

Defendant makes these Requests alleging that Notice and opportunity to investigate the purpose evidence is an essential part of Defendant's Right to a fair trial, just judgement, Sentence, effective Representation by Counsel and Constitutional due process pursuant to provisions of Article I, Section 10 and 19 of the Constitution of the State of Texas and the fifth, sixth and fourteenth amendments of the United States Constitution. The Request is made and "as soon as practicable" is define for the state attorney to produce the Requested notice and information no later than (30) days upon Receipt of this request.

Defendant Request that if any above-referenced materials cannot be produced within thirty (30) days because it is not "practicable," the state should provide a print out/description of the items and the anticipated date production.

The Request is made for the state to provide written notice and discovery to:

Donald Ray Malena[#]2408951

P.O. Box 8000

Henderson, Texas 75657

and

Supreme Court of the United States

1 First Street N.E.

Office of the Clerk
Washington, DC 20543

OR PIDE@Supreme Court.GOV

Respectfully Submitted

Donald Ray Malena

PRO SE

Donald Ray Malena

TDCJ[#]2408951

Verification of Unsworn Declaration:

I, Donald Ray Malena, Defendant Pro Se in this case, state the following under penalty of perjury: I am a prisoner # 2408951, currently incarcerated in the Texas Department of Criminal Justice, Wichita Falls County, Texas. I am duly qualified and authorized in all respect to make this declaration. I have read the foregoing, Request For Discovery and Investigation, and declare that I have personal knowledge of the facts contained therein and said facts are true and correct.

Executed in Wichita Falls County, Texas
pursuant to Art. 132.001 et. Seq. Texas C.P.R.C.
and 28 USC § 1746, On this 21st day of March,
2025

Donald Ray Malena - Pro Se
Donald Ray Malena - Petitioner
PO Box 8000
Henderson, Texas 75652

Under both federal law (28 USC § 1746) and state law (Art. 132.001, Texas C.P.R.C.), inmate incarcerated in Texas may use an unsworn declaration under penalty of perjury in place of a written declaration before a Notary public.

24-6153

Donald Ray Malena
PRO SE

V

ERIC GUERRERO DR. TDCS
Respondent

IN The
Supreme Court of
the United State

There has been no Response ~~to~~ from the
opposing party attorney Regarding this Requested
material from the opposing party, according to
Article 39.14 of the Texas Code of Criminal
procedure the Texas Rules of evidence and
Brady v Maryland, 373 U.S. 83, 89 (1963), To
this Rule there has not been Compliance, to
Support petitioner's Sentence, Confinement legal
which, is a violation of the 8th amendment of
the United States Constitution which, is a
Reversible error, to be dismissed

Date 5-17-2025

Donald Ray Malena
Donald Ray Malena PRO SE
TDCS, # Petitioner

2408951

Verification of Unsworn Declaration

I, Donald Ray Malena, Defendant pro se in this Case, state the following under penalty of perjury: I am a Prisoner # 2408951, currently incarcerated in the Texas Department of Criminal Justice, Wichita Falls County, Texas. I am duly qualified and authorized in all Respect to make this declaration. I have Read the foregoing Petition For Writ of Certiorari - For Rehearing, and declare that I have personal Knowledge of the facts Contained therein and said facts are true and correct.

EXECUTED in Wichita Falls County, Texas
pursuant to Art. 132.001 et. Seq, Texas C.P.R.C.
and 28 USC § 1746, On this 21st day of March, 2025

Donald Ray Malena - Pro Se
Defendant
Donald Ray Malena - 2408951
Prisoner
P.O. Box 8000
Henderson, Texas

Under both federal law (28 USC § 1746) and State law (Art. 132.001, Texas C.P.R.C.), inmates incarcerated in Texas may use an unsworn declaration under penalty of perjury in place of a written declaration before a notary public.

Verification of Unsworn Declaration:

I, Donald Ray Malena, Defendant pro se in this case, state the following under penalty of perjury: I am a prisoner # 2408951, currently incarcerated in the Texas Department of Criminal Justice, ~~the~~ Wichita Falls, County, Texas. I am duly qualified and authorized in all respect to make this declaration, I have Read the foregoing Petition For writ of Certiorari - For Rehearing, and I have personal knowledge of the Verification of Unsworn Declaration, dated March 21st, 2025, and declare that the date is true and correct

Executed in Wichita Falls County, Texas pursuant to
Art. 132.001 et seq, Texas C.P.R.C. and 28 USC c 1746, on this 17th
day of May, 2025

Donald Ray Malena - Pro Se -
Donald Ray Malena
P.O. Box 8000
Henderson, Texas 75652

Under both federal law (28 USC c 1746) and state law
(Art. 132.001, Texas C.P.R.C.), inmates incarcerated in Texas may
use an unsworn declaration under penalty of perjury in
place of a written declaration before a notary public.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2023

Donald Ray Malena
TDCJ No. 2408951
Allred Unit
2101 FM 369 North
Iowa Park, TX 76367

Re: *Donald Ray Malena v. Bobby Lumpkin, Director*
Case No. 23-11231

Dear Mr. Malena:

Enclosed in the above numbered and styled cause is a courtesy copy of Respondent Lumpkin's Notice of Appearance of Counsel, which was electronically filed with the Court on this date.

Sincerely,

/s/Nathan Tadema

NATHAN TADEMA
Assistant Attorney General
Criminal Appeals Division
(512) 936-1400

NT/x11
Enclosures

The last time Counsel, Nathan Tadema Responded

NOTICE OF FORM FOR APPEARANCE (See Fifth Cir. Rule 12)

Only attorneys admitted to the Bar of this Court may practice before the Court. Each attorney representing a party must complete a separate form. (COMPLETE ENTIRE FORM unless otherwise noted).

Fifth Cir. Case NO. 23-11231

Donald Ray Malena

vs. Bobby Lumpkin, Director

(Short Title)

Texas Department of Criminal Justice, Correctional

The Clerk will enter my appearance as Counsel for

Institutions Division

(Please list names of all parties represented, attach additional pages if necessary.)

The party(s) I represent IN THIS COURT

☐

Petitioner(s)

☐

Respondent(s)

☐

Amicus Curiae

☐

Appellant(s)

☒

Appellee(s)

☐

Intervenor

☒

I certify that the contact information below is current and identical to that listed in my Appellate Filer Account with PACER.

/s/Nathan Tadema

(Signature)

nathan.tadema@oag.texas.gov

(e-mail address)

Nathan Tadema

(Type or print name)

24044285

(State/Bar No.)

Assistant Attorney General

(Title, if any)

Office of the Attorney General of Texas

(Firm or Organization)

Address P.O. Box 12548

City & State Austin, Texas

Zip 78711

Primary Tel. (512) 936-1400 Cell Phone: _____ (Optional)

NOTE: When more than one attorney represents a single party or group of parties, counsel should designate a lead counsel. In the event the court determines oral argument is necessary, lead counsel **only** will receive via e-mail a copy of the court's docket and acknowledgment form. Other counsel must monitor the court's website for the posting of oral argument calendars.

Name of Lead Counsel: Nathan Tadema

A. Name of any Circuit Judge of the Fifth Circuit who participated in this case in the district or bankruptcy court.

B. Inquiry of Counsel. To your knowledge:

(1) Is there any case now pending in this court, which involves the same, substantially the same, similar or related issue(s)?

☐

Yes

☒

No

(2) Is there any such case now pending in a District Court (i) within this Circuit, or (ii) in a Federal Administrative Agency which would likely be appealed to the Fifth Circuit?

☐

Yes

☒

No

(3) Is there any case such as (1) or (2) in which judgment or order has been entered and the case is on its way to this Court by appeal, petition to enforce, review, deny?

☐

Yes

☒

No

(4) Does this case qualify for calendaring priority under 5th Cir. R. 47.7? If so, cite the type of case

If answer to (1), or (2), or (3), is yes, please give detailed information. Number and Style of Related Case:

Name of Court or Agency

Status of Appeal (if any)

Rehearing

Attach. 2

D. Malena - 2408951 - TDCJ - Petition for Writ of Certiorari - #24-6153

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