

24-7199

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

IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

FILED  
APR 04 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ALCENIOS MARTINEZ — PETITIONER  
(Your Name)

vs.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ALCENIOS MARTINEZ  
(Your Name)

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**QUESTION(S) PRESENTED**

1. Is a defendant constitutionally entitled to the appointment of counsel for the initial review of an ineffective assistance of trial counsel claim in a state habeas corpus proceeding?
2. Is defendant's trial counsel ineffective when counsel fails to object to evidence diagnosing a complainant as having been sexually abused absent any physical indication thereof?

## 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

State v. Martinez, No. CR-03529, 220th District Court of Comanche County, Texas. Judgment entered February 18, 2013.

Martinez v. State, No. 11-13-00080-CR, Court of Appeals for the Eleventh District of Texas. Judgment entered March 20, 2015.

Martinez v. State, No. PD-0409-15, Court of Criminal Appeals of Texas. Judgment entered June 3, 2015.

Ex parte Martinez, No. WR-95,991-01, Court of Criminal Appeals of Texas. Judgment entered September 25, 2024.

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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[ ] is unpublished.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[ ] is unpublished.

**[x] 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,  
[x] is unpublished.

The opinion of the Court of Criminal Appeals of Texas court appears at Appendix B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[x] 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 \_\_\_\_\_.  
S

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 9/25/2024. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: 1/15/2025, and a copy of the order denying rehearing appears at Appendix B.

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 \_\_\_\_\_.  
A

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. CONST. AMEND. VI - Right to the appointment of Counsel and  
effective assistance.

## STATEMENT OF THE CASE

Alcenios Martinez was convicted of continuous sexual abuse of a child and sentenced to 50 years imprisonment.

In the state habeas corpus proceeding, Martinez raised two grounds of ineffective assistance of trial counsel. He requested the appointment of habeas counsel, which is clearly reflected on his habeas application and in his motion for appointment of counsel. Neither the trial court or the Court of Criminal Appeals appointed Martinez habeas counsel and he was forced to proceed pro se.

At trial, evidence was entered by a Sexual Assault Nurse Examiner diagnosing the complainant as having been sexually abused based on the complainant's verbal claim alone. The SANE nurse testified that there was no physical indication of abuse and her SANE Report was entered into evidence, which also contained a diagnosis of sexual abuse. Martinez's trial counsel failed to object to this evidence based on well settled case law that the evidence is nothing more than bolstering and comments on the truthfulness of the complainant. Such evidence removed the finding of the element of abuse by the fact finder.

## REASONS FOR GRANTING THE PETITION

Martinez was denied the appointment of counsel for his initial-review of his ineffective assistance of trial counsel claims in the state habeas corpus proceeding. This violated Martinez's right to counsel, as guaranteed by Amendments VI and XIV to the United States Constitution. See U.S. CONST. AMEND. VI, XIV.

In Griffin v. Ill., 351 U.S. 12 (1956) and Smith v. Robbins, 528 U.S. 259 (2000) the Court held that an indigent defendant was constitutionally entitled to a transcript on appeal and the effective assistance of appellate counsel for the initial-review of a claim. An ineffective assistance of trial counsel claim cannot be raised on appeal in Texas. See Trevino v. Thaler, 133 S.Ct. 191 (2013). This Court stopped short of addressing whether in this type of circumstance whether an indigent defendant was entitled to the appointment of counsel for the initial-review of such a claim. See Martinez v. Ryan, 132 S.Ct. 1309 (2012). Based on this Court's prior rulings, Martinez should be entitled to the appointment of habeas counsel for the initial review of his ineffective assistance of trial counsel claims because Martinez was indigent.

In addition, Martinez's trial counsel failed to object to evidence at trial that bolstered the complainant and went to her truthfulness. This violated Martinez's right to counsel, as guaranteed by Amendments VI and XIV to the United States Constitution. See Strickland v. Washington, 466 U.S. 668 (1984).

At trial, the Sexual Assault Nurse Examiner was allowed to testify that her impression of the complainant was "sexual abuse, normal exam, no anal or genital trauma." The SANE nurse's written

report was also entered as evidence. Martinez's trial counsel failed to object to this evidence based on it bolstering the complainant and going to her truthfulness absent a physical finding of abuse. The Court of Criminal Appeals of Texas has held that this type of evidence is unconstitutional. See Yount v. State, 872 S.W.2d 707, 710-11 (Tex. Crim. App. 1993); Salinas v. State, 166 S.W.3d 368, 371 (Tex. App.-Fort Worth 2005 pet. ref'd).

Based on this clearly established case law, the Court of Criminal Appeals of Texas should have found Martinez's trial counsel ineffective in the state habeas corpus proceeding.

#### **CONCLUSION**

Alcenios Martinez was entitled to the appointment of counsel in the habeas proceeding and his trial counsel was ineffective. The petition for a writ of certiorari should be granted.

Respectfully submitted,



\_\_\_\_\_  
ALCENIOS MARTINEZ  
PETITIONER

Date: April 4, 2025