

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICARDO ZAMORA — PETITIONER
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US COURT OF APPEALS FOR THE FIFTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

RICARDO ZAMORA #1776208

(Your Name)

264 FM 3478

(Address)

Huntsville, TX 77320

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

Did Zamora's substantial showing, with documentary evidence, of the violation of a constitutional right to due process, entitle him him to a Certificate of Appealability?

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:

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

OTHER

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APPENDIX E	- Exhibits filed demonstrating attorney Canales's failure to notify Zamora and Moya.
APPENDIX F	- US District Court; Order granting in forma pauperis.

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 B 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☒ is unpublished.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 C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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☐ is unpublished.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 _____ 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☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 3, 2017.

☐ 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: September 6, 2017, and a copy of the order denying rehearing appears at Appendix A.

☐ 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.

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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendments 5, 6, and 14.

STATEMENT OF THE CASE

Zamora filed a state petition for writ of habeas corpus in which he claimed his appellate attorney failed to notify him of his due process right to file a Petition for Discretionary Review (PDR). Texas law requires this notification. Gabi Canales, the attorney in question, filed an affidavit in which she claimed she did notify Zamora of his right, and that it was automatically generated by her word processing program in every letter she sent notifying a client of an appellate court decision. Zamora's petition was denied by the Texas Court of Criminal Appeals.

Zamora filed a §2254 petition for writ of habeas corpus in US District Court. Zamora included a copy of the letter sent to him by Canales, which did not include the notification. Moreover, Zamora included a second exhibit from a different client of Canales' which was also missing the statement that her affidavit claimed was included automatically on every notification letter. Despite this, the District Court denied Zamora's petition, and refused to issue a COA.

Zamora sought a Certificate of Appealability from the Fifth Circuit. This request was denied.

Zamora filed a motion for rehearing with the Fifth Circuit. This motion was also denied.

This petition for writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

Zamora made a substantial showing of ineffective assistance of counsel that resulted in his loss of a due process right to review.

Texas law requires appellate attorneys to notify clients of their right to file a Petition for Discretionary Review.

Attorney Canales filed an affidavit with the state habeas court in which she claimed she did notify Zamora of this right, and stated further that the notification was always automatically included by her word-processing program on notifications of appellate court decisions.

Zamora had no reason to suspect that Canales would be less than truthful or so mistaken in her sworn affidavit, and thus did not include his notification from Canales. The Texas Court of Criminal Appeals chose to find Canales' affidavit credible, and denied relief.

Zamora filed a §2254 petition which included not only his notification letter, but a second letter from another Canales client, Felix Moya. Both letters were missing the supposed automatically generated notification.

Despite there having been no requirement for Zamora to submit proof beyond his bare claim in state court, the US Magistrate held that the letters had not been submitted in state court, and so had no bearing. Despite Zamora's objections, the District Court agreed, denied relief, and refused to issue a COA.

Zamora requested a COA from the Fifth Circuit and again submitted the letters showing that he had been denied both effective assistance of counsel and the due process right to review of his case.

The letters to two separate Canales clients show indisputably that, at best, Canales was badly mistaken in her affidavit to the state habeas court. In any event, they demonstrate that she failed in her duty as effective counsel to notify Zamora of a due process right, a right which Zamora was unable to take advantage of.

The Fifth Circuit's opinion that Zamora failed to make a substantial showing of the denial of a constitutional right is unreasonable and contrary to decisions of this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ricardo Zamora

Date: 11/26/2017

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-41234

RICARDO ZAMORA,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Appeal from the United States District Court for the
Southern District of Texas, Corpus Christi

Before SMITH, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:

A member of this panel previously denied appellant's motion for a certificate of appealability. The panel has considered appellant's "Motion for Rehearing" as a motion for reconsideration of the denial of a certificate of appealability. IT IS ORDERED that the motion is DENIED.

"A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RICARDO ZAMORA,
Petitioner,

v.

LORIE DAVIS, Director,
TDCJ-ID,
Respondent.

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No. 16-41234

USDC No. 2:15-CV-281

MOTION FOR REHEARING

Ricardo Zamora, petitioner pro se, appealed to this Court for a certificate of appealability from the judgment of the Southern District of Texas.

This Court denied Zamora's motion, concluding that he failed to make a substantial showing of the denial of a constitutional right after such claims had been rejected on the merits.

Zamora respectfully urges this Court to review its decision based on the following:

THE DISTRICT COURT DENIED THE APPLICATION BASED ON
PROCEDURAL GROUNDS

The District Court, in its decision, denied Zamora's application because it believed he had not filed it within AEDPA's one year limitations period.

As Zamora noted, Slack v. McDaniel, 529 US 473, 483-84 (2000) holds that if a ground is dismissed on procedural grounds and he shows, at least, that jurists of reason would find it debatable whether the ground of the petition at issue states a valid claim of a constitutional right, a certificate of appealability must be issued.

There is no doubt that Zamora stated a valid claim, and that reasonable jurists would overwhelmingly agree so, because even a liberal reading of the law shows his due process right to review

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was violated because of the ineffectiveness of his attorney.

ZAMORA STATED TWO VALID INSTANCES OF THE VIOLATION OF
HIS CONSTITUTIONAL RIGHTS

Even if this Court concludes that his petition was dismissed based on the merits by the District Court, Zamora has made a significant and substantial showing, with irrefutable proof, of the denial of a due process right because of the ineffectiveness of his attorney, a compound violation.

Zamora explained in his application for COA, over two pages, how his attorney, Gabi Canales, failed to notify him of his right to file a petition for discretionary review. Moreover, Zamora included the letter from Canales that she later claimed contained the notice. Not only that, Zamora included a second letter from Canales, received by another client of hers, that was also missing the notification.

Canales filed an affidavit in state habeas proceedings where- in she claimed that the notification is automatically generated by her word processing software. Each of the letters, dated within a week of each other, are void of any reference to her client's due process right to a PDR, despite her claim that it is always automatically generated.

It is difficult to conceive that reasonable jurists would not agree that Zamora's claim that his attorney failed to notify him of a due process right, that notification being required by Texas law, did not violate his right to effective assistance of counsel as guaranteed by the US Constitution.

Additionally, Zamora's showing that Canales, in at least two instances, neglected her duty, indicates that Canales was at least woefully mistaken, or at most blatantly untruthful, in her

sworn affidavit to the state habeas court.

Again, it is difficult that reasonable jurists, considering Zamora's claim with affidavit and contradictory letters in hand, would not find his constitutional claim at least debatable. Fair jurists should frown on an attorney who fails to notify her clients of a due process right when she is in fact required by law to make such a notification. Those frowns should deepen when they learn that she either did not take the time to review her processes, or just plain lied when she swore her affidavit.

CONCLUSION

Zamora's claims were either dismissed on procedural grounds, or denied on the merits. In either case, Zamora made a substantial showing of the violation of his right to due process, as well as his right to effective assistance of counsel when requesting his COA. Zamora is not required to show on this request that he would prevail, only that he makes a claim of the violation of a constitutional right. He has done so.

PRAYER

Zamora prays this Court reconsider its prior decision and issue the Certificate of Appealability.

Respectfully Submitted,

Ricardo Zamora

Ricardo Zamora, pro se
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