

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Alexander Ward — PETITIONER
(Your Name)

vs.

The 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

Michael Ward #2073205

(Your Name)

Robertson Unit, 12071 F.M. 3522

(Address)

Abilene, Texas 79601

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether Petitioner's Constitutional Rights under the 6th and 14th Amendments were violated when the Court of Appeals has been inconsistent in their review of claims of ineffective assistance of counsel on direct appeal where defense counsel fails to object or otherwise exclude testimony that an alleged child victim of sexual abuse is telling the truth?

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:

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STATUTES AND RULES

OTHER

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☐ is unpublished.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☐ is unpublished.

☒ 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,
☒ is unpublished.

The opinion of the Sixth Court of Appeals District 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,
☒ is unpublished.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 ____.

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 7th Dec 2017.
A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date:
6th Dec 2017, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

Sixth Amendment to the United States Constitution

Fourteenth Amendment to the United States Constitution

STATEMENT OF THE CASE

This petition arises on direct criminal appeal of Petitioner's judgement of conviction and sentence for continuous sexual abuse of a child or children under 14, in violation of Section 21.02 of the Texas Penal Code.

Petitioner was accused of sexually abusing his son and daughter. With no physical findings of sexual abuse, the trial centered on the credibility of the children, both of whom testified in the trial (3 RR 80-103, 115-125; 4 RR 19). But the State managed to bolster each child's credibility by eliciting patently inadmissible testimony from its experts that the children were telling the truth (4 RR 20, 36).

On direct appeal, Petitioner raised inter alia, a claim of ineffective assistance of counsel on the basis that trial counsel failed to object or otherwise seek exclusion of this forbidden testimony. The Court of Appeals overruled the claim, as well as Petitioner's other claims of error.

REASONS FOR GRANTING THE PETITION

Whether Petitioner's Constitutional Rights under the 6th and 14th Amendments were violated when the Court of Appeals has been inconsistent in their review of claims of ineffective assistance of counsel on direct appeal where defense counsel fails to object or otherwise exclude testimony that an alleged child victim of sexual abuse is telling the truth?

* * * * *

The law is crystal clear that a child's allegations of sexual abuse may NOT be bolstered with an expert opinion that the child is telling the truth. See, Yount v. State, 372 S.W.2d 706, 711 (Tex. Crim. App. 1993); Schutz v. State, 957 S.W.2d 52, 59 (Tex. Crim. App. 1997); Ayala v. State, 352 S.W.2d 955, 956 (Tex. Crim. App. 1955).

As the Texas Court of Criminal Appeals observed in Yount, "virtually every jurisdiction which has addressed, in the context of child sexual assault case, the admissibility of direct testimony as to the truthfulness of the child complainant, has held that such testimony is inadmissible." Yount, 872 S.W.2d at 711.

Such plainly forbidden evidence is so damaging in a child sexual abuse case that many courts of appeals have previously held on direct appeal that defense counsel's failure to object or otherwise exclude such testimony constitutes ineffective assistance of counsel. See, Fuller v. State, 224 S.W.3d 823, 835-38 (Tex. App. - Texarkana 2007, no. pet.); Sessums, 129 S.W.3d 242, 247-48 (Tex. App. - Texarkana 2004, pet. ref'd); Lane v. State, 257 S.W.3d 22, 27-28 (Tex. App. - Houston [14th Dist.] 2008, pet. ref'd); Miller v. State, 757 S.W.2d 880, 881-886 (Tex. App. - Dallas 1988, pet. ref'd); Garcia v. State, 712 S.W.2d 249, 252-53 (Tex. App. - El Paso 1986, pet. ref'd).

But other Courts - also including the Court below, disturbingly - have refused to find that a trial court's failure to object or exclude opinion evidence regarding truthfulness constituted deficient performance on direct appeal. See, Moran v. State, 350 S.W.3d 240, 245 (Tex. App. - San Antonio 2011, no. pet); Arrington v. State, 2015 Tex. App. LEXIS 2529 (Tex. App. - San Antonio 2015, no pet); Ward, 2017 Tex. App. LEXIS at *4; Johnson v. State, 432 S.W.3d 552, 557 (Tex. App. - Texarkana 2014, pet. ref'd); Alberts v. State, 302 S.W.3d 495, 506 & n. 7 (Tex. App. - Texarkana 2009, no pet.); Upton v. State, 2009 Tex. App. LEXIS 362 (Tex. App. - Texarkana 2009, pet. ref'd); Aguirre-Moreno v. State, 2015 Tex. App. LEXIS 5838 at *6-7 (Tex. App. - Tyler 2015, no. pet).

This case provides the perfect vehicle to resolve the existing tension among the court of appeals. The facts giving rise to particular claim are squarely presented in this case. Both of Petitioner's children testified to acts of sexual abuse conducted by or at the behest of Petitioner. (3 RR 80-103, 115-125). And while there was no physical evidence to support these allegations, without adequate opposition from defense counsel, the State elicited evidence from its purported experts to assure the jury that the children were telling the truth.

It is for this reason that his Honorable Court should resolve the tension among the lower appellate courts reviewing this particular brand of ineffective assistance of counsel on direct appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael J. V. [Signature]

Date: 28th February 2018