

In the
Supreme Court of the United States

JUAN EDWARD CASTILLO,
Petitioner,

vs.

TEXAS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF TEXAS

**REPLY IN SUPPORT OF PETITION FOR A WRIT OF
CERTIORARI**

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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Juan Castillo raised a substantial claim in a state habeas corpus proceeding implicating the legality of his confinement and his guilt for the charged crime. Mr. Castillo was convicted of capital murder on the testimony of two accomplices, two family members of an accomplice, and one independent witness who testified that Mr. Castillo admitted his participation in the offense while they were incarcerated together in the county jail. No physical or forensic evidence connected Castillo to the offense.¹ The claim alleged, *inter alia*, that the State's **only** independent witness to implicate Castillo in capital murder, Gerardo Gutierrez, admitted that he fabricated his testimony that Castillo had confessed to committing the crime to him while in jail together. Outside of Gutierrez's testimony, the State's case against Castillo focused on the testimony of two admitted accomplice witnesses, Francisco Gonzales and Debra Espinosa.² The jury heard that both had made plea deals with the State to

¹ The only other evidence that the State presented to attempt to connect Mr. Castillo to the offense was the testimony of Jessica Cantu, who went to high school with the victim and who testified that she thought that she saw Mr. Castillo wearing a necklace that looked similar to one she had seen the victim wear. She also admitted that she did not get a good look at the necklace and that she was not exactly sure what she had seen.

² Texas law recognizes that the testimony of an accomplice is inherently untrustworthy. Thus, an accomplice witness's testimony alone cannot furnish the basis for a criminal conviction. *Cast v. State*, 296 S.W.2d 269, 271 (Tex. Crim. App. 1956). *See also* Tex. Code Crim. Proc. Ann. art. 38.14. "The rule reflects a legislative determination that accomplice testimony implicating another person should be viewed with a measure of caution, because accomplices often have incentives to lie, such as to avoid punishment or shift blame to another person." *Blake v. State*, 971

testify at trial against Castillo. Both directly implicated Castillo as the shooter. Both clearly had reasons and incentives for doing so, even if not true.

The State called two additional witnesses who implicated Castillo in the offense, Brian Brown and Lucinda Gonzales. Lucinda Gonzales was Francisco Gonzales's younger sister and was living with Francisco Gonzales at the time. Brown was Francisco Gonzales's nephew, and he also lived with Lucinda and Francisco Gonzales. Brown and Lucinda Gonzales both indirectly implicated Castillo as the shooter, even though neither were a witness to the crime. Both conveniently testified they had overheard Castillo admit to the shooting to the same person on two different occasions, exonerating their relative Frank Gonzales.³ Both made statements to the police, implicating Castillo, only the day before Francisco Gonzales entered into a plea deal with the State to avoid his capital murder trial.

The State also presented Gerardo Gutierrez who testified that, while the two were incarcerated together following Castillo's arrest for the crime, Castillo admitted to having committed the shooting to him. Gutierrez was the only witness who was neither an accomplice nor a close family member of an accomplice. He told the jury

S.W.2d 451, 454 (Tex. Crim. App. 1998). "The accomplice's motives in testifying against the accused may well include malice or an attempt to curry favor from the state in the form of a lesser punishment, or perhaps, no punishment." *Nolley v. State*, 5 S.W.3d 850, 853 (Tex. App.—Houston [14th Dist.] 1999).

³ These alleged overheard conversations were between Castillo and Francisco Gonzales's girlfriend Teresa Quintero. Quintero, who could have corroborated these conversations, did not testify at trial.

that, at the present time, he was working, was not incarcerated, and did not have any charges pending against him. He also stated that he had no hard feelings against Castillo, and explained that he was not seeking anything from the prosecution in exchange for his testimony. Years later, Gutierrez admitted he fabricated his testimony that Castillo had admitted to him that he had shot somebody.

I. CERTIORARI SHOULD BE GRANTED TO CLARIFY THAT DUE PROCESS APPLIES TO STATE POST-CONVICTION PROCEEDINGS SOUNDING IN THE NATURE OF HABEAS CORPUS

In its Brief in Opposition (“BIO”), Texas asserts that certiorari should be denied because (1) Mr. Castillo has no due process right to state collateral review; and (2) where the state provides collateral review, the constitution does not mandate the form that review takes. See BIO at 11-12. The first proposition is true, but irrelevant. Where state laws create liberty and life interests—and Texas laws have here—these interests cannot be deprived absent due process. *District Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 67 (2009). What process is due requires a balancing of the interests at stake. *Cruzan by Cruzan v. Dir., Missouri Dep’t of Health*, 497 U.S. 261, 279 (1990).

The second proposition is false. While the constitution may not mandate any *particular* form of collateral review, the due process clause certainly places limits on what form it may take. So do the state’s own laws necessarily limit the form (by prescription in conjunction with due process). First, a state must always observe fundamental due process—notice and an opportunity to be heard commensurate to the interests at stake—when it deprives an individual of liberty or life interests.

Second, where a state, via its legislature, creates mandatory procedures by which liberty and life interests are to be judicially adjudicated, those procedures must be substantially followed. Third, where a state judicial body—including one reviewing a habeas corpus application—adjudicates facts against a party, it must afford the party notice and an opportunity to present evidence. As explained in the petition, each of these principles was violated in this case.

Texas argues that “petitioners like Castillo have no due process right in collateral proceedings.” BIO at 17. Castillo was certainly treated by Texas and the state trial court as though that were the case. And by denying Castillo’s application by adopting the trial court’s findings without mention or apparent consideration of his due process objections, Texas’s highest criminal court seems to agree. It is this state of affairs that requires the Court’s intervention. Persons confined pursuant to the judgment of a state court are expected to rely on the state court for redress of constitutional violations that render their custody unlawful. So long as this expectation exists, basic fairness of the state process must be recognized as important to the vindication of constitutional rights and enforced.

II. MR. CASTILLO WAS AFFORDED NO OPPORTUNITY TO PRESENT EVIDENCE TO PROVE THE TRUTH OF HIS MATERIAL, DISPUTED ALLEGATIONS

Texas argues that, because there is no requirement that a hearing be held in a habeas corpus case, due process cannot be violated by the failure to afford one. This argument (1) addresses a straw man; and (2) is wrong in any event. Mr. Castillo’s petition does not ask the Court to grant certiorari to hold that a court presiding over

a habeas corpus petition must always hold a hearing. Cases cited by Texas holding there is no right to a hearing are therefore unresponsive to the questions presented in his petition. See BIO at 14. Where material facts are not in dispute, it would not violate due process for a court to rule without holding a hearing first, provided that the court's ruling does not adjudicate material facts against a party. Nor, where a hearing is required, does a court in habeas necessarily have to hold a hearing in any particular form, i.e., a hearing in which live testimony is required. Texas has confused cases holding that a "full and fair hearing" in habeas corpus need not require live testimony for cases holding that no hearing *at all* is required, even when disputed facts are adjudicated. It is clear that, while the former may be compatible with fundamental due process (which is what those cases hold), the latter cannot be.

This case is in the latter category. Castillo is not contending that his due process rights were violated because he was deprived of an opportunity to present live testimony at a hearing held by a state court to resolve disputed facts. He is contending that he was denied a hearing *entirely*. After the State denied his allegation that particular testimony at his trial was false, Castillo was denied any opportunity—at all—to present any evidence—in any form—to prove the allegation true, notwithstanding that whether the testimony was false or true was material to the claim's resolution—indeed, was outcome determinative. See BIO at 9 (characterizing state court decision as holding that Castillo "failed to prove that the testimony presented at trial was false").

In this case, although the State did not file an answer as required by the statute, it did file proposed findings which asked the state court to adopt a finding that Castillo had “not met his burden to prove” the testimony was false. Texas Code of Criminal Procedure Article 11.071 § 7 provides that matters alleged in the application not admitted by the state in its answer are deemed denied. Thus, to the extent what the State filed could be construed as an answer, it was one that did not admit Castillo’s allegation that a witness testified falsely, and which therefore denied it. Having denied an allegation clearly relevant to the claim, the allegation became a controverted, previously unresolved factual issue material to the legality of Castillo’s confinement. *Ex Parte Carnes*, 579 S.W.2d 249 (Tex. Crim. App. 1979).

Upon such a finding, both Section 9 of the statute and fundamental due process require a hearing in which the parties may submit evidence relevant to the disputed facts. *See Ex parte Medina*, 361 S.W.3d 633, 638 (Tex. Crim. App. 2011) (“hearing” is “required when there are ‘controverted, previously unresolved factual issues material to the legality of the applicant’s confinement’”). Instead, the state courts relied on the State’s arguments about why Mr. Gutierrez’s affidavit was not credible, including assertions – based on nothing but speculation – that Mr. Gutierrez’s recantation may be false. *Compare* App. 2 at 11 *with* App. 4 at 11. Thus by adopting the State’s proposed findings, the state court found Castillo’s central factual allegation that particular testimony in his trial was false to be untrue, but it afforded him no opportunity to present evidence to prove the allegation true before doing so. This violated due process in and of itself, and it doubly violated it by having done it in

defiance of Texas’s governing statute, which required a hearing and opportunity to present evidence.

Texas argues that the procedural facts of the case reflect “in no uncertain terms” that Castillo was afforded a meaningful opportunity to be heard. BIO at 15. This is because, Texas contends, (1) he filed a state habeas application, (2) a stay of execution was granted, (3) the State filed an answer, and (4) “affidavits and exhibits from both parties were reviewed and considered before the state court’s merits determination.”⁴ BIO at 15-16. Although Texas mischaracterizes the procedural facts, this series of events—even if true—is hardly sufficient to establish that a meaningful opportunity to be heard was afforded. A court sitting in summary judgment may consider affidavits and other documentary materials to determine whether a genuine issue of material fact exists, but this does not mean that its adjudication of genuine fact disputes against a party in that posture would comport with due process.

It is of no moment that Castillo attached an affidavit to his application. Attaching a document to a pleading does not waive a party’s right to present evidence in support of disputed allegations at a hearing. It is, then, irrelevant if the state court “considered” the affidavit, because Castillo never intended the affidavit to constitute the totality of the evidence he would present at a hearing to prove his allegation that false testimony was given. The gravamen of Castillo’s due process complaint is that

⁴ The State did not attach any affidavits or exhibits to its pleadings.

the state court considered *only* the affidavit—notwithstanding that it was never formally moved into or admitted as evidence—and that, by bypassing the mandatory procedures contained in the statute, it prohibited Castillo from presenting *any* evidence beyond what was attached to his application to establish the truth of his allegation.

Castillo would have been prepared to present evidence in support of his allegations beyond the exhibit he attached to his application. The statute and fundamental due process afford him such a prerogative (where material allegations are disputed), but that was denied him. Moreover, Castillo had no notice that his opportunity to present evidence would be entirely limited to those documents he attached to his application.

III. TEXAS REMAINS SILENT ABOUT ITS DEPRIVATION OF MR. CASTILLO'S STATUTORY RIGHT TO APPOINTED COUNSEL IN THE PROCEEDING

In its BIO, Texas defends its judgment, but has nothing to say about its deprivation of Mr. Castillo's statutory right to appointed counsel in a capital proceeding. The Court should grant certiorari, at a minimum, to hold it violated due process to deny Mr. Castillo his statutory right to be represented by appointed counsel in his capital proceeding in the state court.⁵

⁵ Although the Texas Defender Service continued to represent Mr. Castillo in the proceeding notwithstanding the failure to appoint counsel, the representation was limited to lodging objections to the state court's failure to afford even the most

IV. TEXAS’S BELIEF THAT THE CIRCUMSTANCES OF THIS CASE AMOUNT TO “ROUTINE ERROR CORRECTION” EXEMPLIFIES THE IMPORTANCE OF SUPREME COURT CLARITY

In describing certiorari review in this case as “routine error correction,” BIO at 16, Texas clearly understands the process by which his habeas corpus application was adjudicated to have been normal in Texas and unproblematic. The Texas Court of Criminal Appeals’s blithe disregard of Castillo’s objections would seem to confirm that the Texas courts do not believe that they owe habeas corpus applicants any more process than Castillo received here, or that they are even required, to any degree, to follow state laws setting out mandatory procedures and rights for adjudicating habeas corpus cases, including the provision of appointed counsel. The Court’s intervention is necessary to ensure that prisoners receive fair consideration of constitutional claims by state courts reviewing habeas corpus applications.

rudimentary process due him. To date, Mr. Castillo has had no representation on the underlying substantive claim since the CCA authorized its merit to be considered.

CONCLUSION

For the foregoing reasons, Mr. Castillo respectfully requests that this Court stay his execution and grant his petition for writ of certiorari in order to address the critical questions of what process is due to a prisoner in a state habeas proceeding and whether the state court here violated Mr. Castillo's Fourteenth Amendment rights.



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