

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PATRICK BERNARD INGRAM — PETITIONER
(Your Name)

vs.

LORIE DAVIS, Director - TDCJ-ID — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

PATRICK BERNARD INGRAM
(Your Name)
BETO PRISON
1391 FM 3328
(Address)

TENNESSEE COLONY, TEXAS, 75880
(City, State, Zip Code)

(903) 928-2217
(Phone Number)

QUESTION(S) PRESENTED

- (1). Whether the evidence produced was legally and factually sufficient to sustain the conviction.
- (2). Whether the two indictments so infected the inception of the proceedings that spill-over prejudice had attached at the very foundation of prosecution, therefore, a retrial or new sentencing was warranted.
- (3). Whether petitioner was denied the right to confront a witness.
- (4). Whether trial counsel was ineffective:
 - (a) Failing to object to hearsay statement.
 - (b) Failing to challenge a bias juror
 - (c) Failing to object that petitioner was not present for response to jury note.

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:

(1) THE 194TH JUDICIAL DISTRICT COURT, DALLAS, COUNTY, TEXAS

(2) THE TEXAS COURT OF CRIMINAL APPEALS

(3) THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

(4) UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Davis v. THALOR, 373 F. App'x 446, 450-51 (5th Cir 2010)	
Harris v. STATE, 359 S.W.3d 625 (Tex. Crim. App. 2011)	
INGRAM v. STATE, NO. 79,416-01 (Tex. Crim. App. Sept. 11, 2013)	
JACKSON v. STATE, 443 U.S. 307 (1979)	
UNITED STATES v. ALOFSKY, 458 F.3d 369 (5th Cir. 2006)	
UNITED STATES v. Michel, 588 F.2d 986, 1001 (5th Cir.)	

STATUTES AND RULES

28 U.S.C. § 2254	
TEXAS PENAL CODE § 21.11 (A)(2)(A)	
ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA)	

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 C to the petition and is

☐ reported at _____; NO. 16-11388; 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 B to the petition and is

☐ reported at USDC NO. 3:14-CV-1748; 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 EX PARTE INGRAM, NO 79,416-62; or,

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

☒ is unpublished.

The opinion of the EX PARTE INGRAM, NO 79,416-01 court appears at Appendix A to the petition and is

☐ reported at NO. 79,416-01; 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 June 05, 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: _____, 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 9-11-13.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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. N/A

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMENDMENT 5TH

U.S. CONST. AMENDMENT 6TH

~~U.S. CONST. AMENDMENT 8TH~~

U.S. CONST. AMENDMENT 14TH

STATEMENT OF THE CASE

PETITIONER sought relief pursuant to 28 U.S.C §2254, following a conviction in the 194TH JUDICIAL DISTRICT COURT, DALLAS COUNTY, TEXAS. PETITIONER received TWO 35 YEAR SENTENCES arising from one alleged criminal episode.

PETITIONER filed his first STATE WRIT OF Habeas Corpus on February 26, 2013. The trial court forwarded the habeas record to the TEXAS COURT OF CRIMINAL APPEALS without making a finding. On May 22, 2013, the Court of Criminal APPEALS remanded the matter to the trial court for a findings on claims of Double Jeopardy and ineffective assistance of counsel.

The Court of Criminal APPEALS granted relief on Petitioner's claim of Double Jeopardy and vacated and set aside the Judgment in NO. F09-5263D. No other relief occurred.

On May 6, 2014, Petitioner sought federal relief; and raised grounds of relief:

- (1) THE EVIDENCE WAS INSUFFICIENT TO SUPPORT CONVICTION.
- (2) THE TWO SENTENCES AND CONVICTION VIOLATION DUE PROCESS - WITH SPILL-OVER PREJUDICE.
- (3) DENIED THE RIGHT TO CONFRONTATION.
- (4) Ineffective assistance of Counsel
- (5) Denied the right to present a defense
- (6) Cumulative error.

ALL Parties involved admit that PETITIONER'S Due Process rights were violated. However, because this Court has not specifically address this issue the lower courts hold that no relief is available - only to vacate one conviction. Although the Due Process violation occurred at the time Petitioner was arraigned and charge with two separate Bonds, thus infecting the entire proceedings.

REASONS FOR GRANTING THE PETITION

The Petitioner believes that he has Presented Several Valid issues before both State and U.S. District Courts. However, their response has both been interesting and conflicting at the same time.

First, the Petitioner has raised the claim of factual and legal innocence of the alleged crime itself.

Thus, applying the Jackson V. Virginia, at 443 U.S. 307 (1979) held that the correct standard of review when a Prisoner Challenges the sufficiency of the evidence in a federal habeas Corpus Proceeding is "Whether, after viewing the light most favorable to the Prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt". Id at 320

After applying the JACKSON, supra Standard in the present case. The State failed to meet their burden of each element of the offense - Namely "EXPOSURE". The Jurors expressed their confusion with the matter of Law in their deliberations when they sent out Jury Note # 9 which reads "Does exposure have to occur or merely indecency?"

The Jury expressed their dispute of the elements of the charge and requested the definition of all elements that must be met in order to satisfy the charge.

The trial court failed to clear up this issue of dispute for the Jurors. The Jurors found the defendant guilty for "Merely Indecency" which is not the statute for

TEXAS PENAL CODE § 21.11(A)(2)(A) EXPOSE ANY PART OF THE PERSON'S genitals, knowing the child is present.

THE EVIDENCE that the States Attorney Present at trial would only support - as one witness stated that "the man had his hand" in his pants. There was not any proof of an actual exposure presented. Furthermore, the State Attorney could have asked the witness for clarity, but chose not to - but why not? The witness was old enough to explain if the alleged offense was "covered" or "uncovered" very simple and surely not obscene or offensive.

This issue needs this Courts attention so the lower federal Courts can properly apply the JACKSONS, supra standard. And allow lower federal Courts the authority needed to consider "LEGAL" and "factual" sufficiency evidence with regards to the [AEDPA] without this Courts attention the lower Courts hands are tied in matters of "LEGAL" and "FACTUAL" INNOCENCE CLAIMS - when applying AEDPA for PETITIONERS SEEKING Federal Habeas Corpus Relief; when relief is clearly warranted.

Secondly, Double Jeopardy Prohibits Multiple Prosecutions for a single offense, and to do so violated Due Process right to a fair trial, but infected the entire criminal Proceedings.

PETITIONER was arrested March 15, 2009. The statute was in TEXAS PENAL CODE § 21.11(A)(2)(A) at that time. The states attorney should have known the law and the statute clearly at that time, before they pursued multiple indictments.

Petitioner contends that Multiple indictments Violated Petitioner 8TH AMENDMENT right against "Excessive bail shall not be required, nor excessive fines imposed."

Petitioner had two \$50,000 Bonds. Petitioner Could have Posted Bond on one indictment or charge, but he was Unable to raise enough for \$100,000. The STATES ATTORNEY MADE A PLEA OFFER OF TEN (10) YEARS in Both indictments, but the OFFER may have been lower with one indictment. When The Jurors were asked about multiple indictment Some OF the Jurors said, it Kind of makes you think that he's guilty. (see Reports Record 29-31)

Although Federal Courts have a similar rule, but it is qualified by recognition that reversal or resentencing of both cases may be necessary if one case Contributed to the punishment of the other. United States v. Agofsky, 458 F.3d 369 (5TH Cir. 2006) Cert. denied, 127 S.Ct 1149 (2007); United States v. Michel, 588 F.2d 986, 1001 (5th Cir) cert. denied 444 U.S. 825 (1979) Thus, Federal Courts recognize that Prejudice from one case that is a violation of double jeopardy may spill-over to another case, requiring the reversal of both.

In this case, the only relief given is to Vacate and Set-aside one Conviction. Although is the Controlling Case of Harris v. STATE, 359 S.W3d 625 (Tex.Crim.App. 2011)

Which was almost identicle, Ex parte Harris, Received a New Sentencing. Therefore, Petitioner contends this was a Violation of his Constitutional right of 14TH Amendment OF Due Process of Law and Equal protection of Law. Furthermore, it seems contrary to make two different ruling when the cases are basically identicle.

In response to Petitioner 2254 Habeas corpus The Director of TEXAS Department of Criminal Justice States That Because the United STATES Supreme Court had NOT Address Any similar Issue, then there is NO relief available. Therefore, Petitioner would ask this Court to Address this issue of A conviction obtained in violation of Due Process to be void from inception — EVEN if it is raised later.

No one is denying that Petitioners right is violated however, the courts hands seem to be tied on the manner of relief available in the scope of operation of Law beginning at the time of arrest until the Conviction become final. Thus, holding that vacating one Conviction does not in itself require a new trial see.

Davis V. Thaler, 373 F. App'x 446, 450-51 (5th Cir. 2010)

However, this is NOT Petitioner Argument. Petitioner is Contending the Structural effect that has the Spill-over Possibility to cause prejudice. This, is similar to the question of, When does the Criminal rights begin?"

Is it at the time of formal charge or arrest? or is it when a person feels he or she is not free to leave.

This is my point. At what point did Due process violation began to cause "harm" and "Prejudice" The error is plain - yet, Petitioner still sits with a 35 year sentence - when relief was granted.

There must be thousands of similar situations across this country in need of this Court's address of this issue. Therefore, Petitioner prays that this Court will address mine.

Finally, Petitioner will consolidate his final questions which he has set before this Court.

In regards to the issue of the right to confront a witness against himself. Petitioner contends that if "all" statements made to a police officer can be held as a ~~not~~ testimonial - or interrogation. Then the scope of Hearsay evidence has now become different in what Courts have held it to be in the past.

Therefore, my question for this Court is this. How could my (the Defendant) STATEMENT which was made to the

arresting officer be considered hearsay — called
The petitioner is present in court, but the "Boy" as
the bike statement be nonhearsay while he was

absent?

Furthermore, ~~this issue~~ gave weight to petitioner's
claim of being denied the right to be present

for the response to the juror's note.

This was a critical stage when petitioner needed

to And in his own defense — because counsel failed

to object to this misleading reply.

Counsel was aware of this possibility because

when the wife first arrived, at the bench

hearing counsel objected and the state's attorney

agreed that "both" sides could suffer if the wrong

reply was sent back. So, both parties agreed the

reply would be "you have all testimony on this issue."

Because the evidence they wanted Did not exist.

Grant Petitioner's Request

Therefore, this court

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patrick B. Ingh

Date: 8-30-17