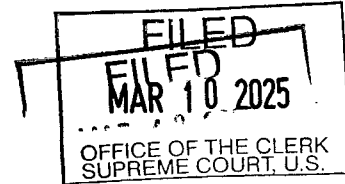


24-7136
No. 24A530



IN THE
SUPREME COURT OF THE UNITED STATES

DEWAYNE LEE WALDZUP — PETITIONER
(Your Name)

vs.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

DEWAYNE LEE WALDZUP
(Your Name)

810 FM 2821
(Address)

HUNTSVILLE, TEXAS 77349
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

QUESTION 1:

WHERE PETITIONER REPRESENTED HIMSELF, PRO SE DURING TRIAL AND TOOK ON A PARTICULAR STRATEGY, AND COURT-APPOINTED APPELLATE COUNSEL FAILED TO CONFER, INVESTIGATE, ADVISE, AND/OR GAIN CLEAR AND EXPRESS CONSENT. DID COUNSEL'S ACTIONS OF FORGOING PETITIONER'S MOTION FOR NEW TRIAL CONSTITUTE ABANDONMENT? IF SO, IS PREJUDICE PRESUMED?

QUESTION 2:

WHERE THE TRIAL COURT AND THE TEXAS COURT OF CRIMINAL APPEALS DENIED PETITIONER'S 11.07 WRIT APPLICATION WITHOUT CONDUCTING AN ADEQUATE INQUIRY INTO HIS COLORABLE CLAIM OF DEPRIVATION OF COUNSEL AND DUE PROCESS DURING A CRITICAL STAGE, AND WHERE THE STATE'S 11.07 WRIT OF HABEAS POLICY FAILS TO MANDATE THE APPOINTMENT OF COUNSEL AND EVIDENTIARY HEARINGS FOR INDIGENT APPLICANTS WITH COLORABLE CLAIMS OF THIS MAGNITUDE. DID THE STATE'S COLLATERAL VEHICLE (11.07) DEPRIVE PETITIONER OF A 'FULL AND FAIR' OPPORTUNITY TO LITIGATE, DUE PROCESS, AND/OR EQUAL PROTECTION, WHERE TEXAS TRIAL COURTS ROUTINELY ORDER EVIDENTIARY HEARINGS FOR SIMILARLY SITUATED PERSONS WITH PAID COUNSEL?

QUESTION 3 :

WHERE THE TRIAL COURT DENIED PETITIONER'S MOTION TO DISMISS COURT-APPOINTED COUNSEL AND APPOINT NEW COUNSEL, UPON A SHOWING OF GOOD CAUSE, IMPERMISSIBLY FORCING PETITIONER TO REPRESENT HIMSELF DURING TRIAL. DID THE TRIAL COURT HAVE JURISDICTION TO PROCEED TO JUDGMENT AND CONVICTION OF PETITIONER?

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

- 1) WALDZUP v. MAGINNIS, 2021 U.S. DIST. LEXIS 186578;
- 2) WALDZUP v. HENDERSON, 2023 U.S. DIST. LEXIS 46066

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RULE 21 OF THE TEXAS RULES OF APPELLATE PROCEDURE;

ARTICLE 1.04 OF THE TEXAS CODE OF CRIMINAL PROCEDURE ;
 ARTICLE 1.05 OF THE TEXAS CODE OF CRIMINAL PROCEDURE ;
 ARTICLE 1.051 OF THE TEXAS CODE OF CRIMINAL PROCEDURE ;
 ARTICLE 26.04 OF THE TEXAS CODE OF CRIMINAL PROCEDURE ;
 ARTICLE 11.07 OF THE TEXAS CODE OF CRIMINAL PROCEDURE ;

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 _____ 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 _____.

☐ 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 _____.
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 MARCH 8, 2025 (date) on DECEMBER 3, 2024 (date) in Application No. 24 A 530.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

STATE

1, §1 OF THE TEXAS CONSTITUTION;
1, §10 OF THE TEXAS CONSTITUTION;
1, §19 OF THE TEXAS CONSTITUTION;

RULE 21 OF THE TEXAS RULES OF APPELLATE PROCEDURE;

ARTICLE 1.04 OF THE TEXAS CODE OF CRIMINAL PROCEDURE;
ARTICLE 1.05 OF THE TEXAS CODE OF CRIMINAL PROCEDURE;
ARTICLE 1.051 OF THE TEXAS CODE OF CRIMINAL PROCEDURE;
ARTICLE 26.04 (j) (2), (3) (A) (B) (C) OF THE TEXAS CODE OF
CRIMINAL PROCEDURE;

STATEMENT OF THE CASE

MONTGOMERY COUNTY'S INDIGENT DEFENSE PROGRAM IS SATURATED IN A 'PAY FOR PLAY' CULTURE, WHERE SEVERAL DISTRICT JUDGES, ASSISTANT DISTRICT ATTORNEY'S, AND SEVERAL KNOWN AND UNKNOWN DEFENSE ATTORNEY'S HAVE DEVISED A SCHEME TO UNJUSTLY ENRICH THEMSELVES AND THEIR STATE BAR ASSOCIATES, AT THE EXPENSE OF THE NATION'S TAXPAYERS, AND THE PEOPLE WHOM THEY HAVE SWORN TO SERVE, BY MISAPPROPRIATING FUNDS ALLOCATED FOR THE COUNTY'S INDIGENT DEFENSE PROGRAM, BREACHING THEIR FIDUCIARY DUTIES, AND ENGAGING IN EXTRINSIC FRAUD. THE SCHEME HAS EVOLVED INTO A SYSTEMIC AND WIDESPREAD CULTURE OF CORRUPTION THAT HAS INFECTED THE FAIR AND PROPER ADMINISTRATION OF CRIMINAL JUSTICE WITHIN ITS INSTITUTIONS, DEPRIVING CRIMINAL DEFENDANTS OF THE BASIC CONSTITUTIONAL SAFEGUARDS, AND THE COMMUNITY OF THE RIGHT TO HAVE THEIR ELECTED OFFICIALS OPERATE FREE OF CORRUPTION, WHERE BASED ON INFORMATION AND BELIEF PETITIONER HAS GOOD REASON TO BELIEVE AND DOES BELIEVE THAT THE COUNTY COURT OFFICIALS OR SOMEONE ACTING ON THEIR BEHALF AND/OR AT THEIR DIRECTION, FORGED BOTH FELONY INDICTMENTS IN ALLEGATION NO. 19-10-14607, AND NO. 19-10-14608 SIMULATING LEGAL PROCESS. THE DEFENSE ATTORNEY'S ROUTINELY HOLD THEMSELVES AND/OR THEIR FIRMS OUT TO BE COMPETENT AND QUALIFIED TO TAKE-ON, AND MAINTAIN FELONY CRIMINAL PROCEEDINGS IN THE BEST INTEREST OF THE CLIENT, BUT ONCE AWARDED THE CONTRACT, AND ASSIGNED A CLIENT'S CASE, THE DEFENSE ATTORNEY'S, ROUTINELY, BEGIN TO ACT WITH A DELIBERATE IGNORANCE IN BRINGING PRELIMINARY CHALLENGES THAT ENSURE SAFEGUARDING THE DEFENDANT'S CONSTITUTIONAL RIGHTS. ^{SEE} (APPENDIX A, B)

THROUGHOUT THE CRIMINAL PROCEEDINGS PETITIONER WAS IMPERMISSIBLY FORCED TO REPRESENT HIMSELF AND

TOOK ON A PARTICULAR STRATEGY TO ENSURE CERTAIN ISSUES WERE PRESERVED FOR APPELLATE REVIEW, WHERE IN MAY OF 2021, PETITIONER FILED A "MOTION TO DISMISS COURT-APPOINTED COUNSEL" ^{SEE (APPENDIX C)}, ALLEGING THAT COUNSEL HAD "BEEN OVERLY RELUCTANT TO ENGAGE THE PROSECUTION ON MEANINGFUL ISSUES THAT ENSURE SAFEGUARDING DEFENDANT'S CONSTITUTIONAL RIGHTS OUT OF CONCERN FOR PROTECTING THE INTEGRITY OF HIS PERSONAL AND BUSINESS RELATIONSHIPS WITH THE COURT", AFTER HOLDING A HEARING, WHERE DEFENSE COUNSEL AND PETITIONER WERE ALLOWED TO ELABORATE, AND PETITIONER DIRECTED THE TRIAL COURT TO TWO ISSUES THAT FORMED THE BASIS FOR THE IRRECONCILABLE CONFLICT, THE TRIAL COURT DENIED THE MOTION. ^{SEE (APPENDIX D)}.

PETITIONER, PRIOR TO TRIAL, AND AFTER BEING PLACED UNDER DURESS, ELECTED TO REPRESENT HIMSELF FOR THE REMAINDER OF THE PROCEEDING. DURING TRIAL THERE WERE MATERIAL DEVELOPMENTS, DISCLOSED FOR THE FIRST TIME, BY THE STATE AND ITS WITNESSES, THAT GAVE A STRONG INDICATION THAT THE STATE HAD COMMITTED MULTIPLE BRADY VIOLATIONS.

PETITIONER, BEING UNSKILLED IN LAW, AND UNAIDED BY COUNSEL FAILED TO LODGE A TIMELY OBJECTION TO THE STATE'S DISCOVERY VIOLATIONS. PURSUANT TO TEXAS LAW (TEX. 3. APP. P. RULE 21), THE ONLY OTHER WAY FOR PETITIONER TO PRESERVE THESE COMPLAINTS WERE BY WAY OF A MOTION FOR NEW TRIAL.

ON OR ABOUT MAY 27, 2021, PETITIONER WAS CONVICTED AND SENTENCED TO 50 YEARS IN THE TDCJ. THE SAME DAY, THE TRIAL COURT APPOINTED APPELLATE COUNSEL RICHARD CANLAS TO ASSIST PETITIONER WITH APPELLATE MATTERS.

ON OR ABOUT MAY 29, 2021, PETITIONER HAD AN INTRODUCTORY MEETING WITH RICHARD CANLAS, WHERE AT THE OUTSET OF THE MEETING, COUNSEL ACKNOWLEDGED THAT HE HAD RECEIVED NOTICE, FROM THE 435TH TRIAL COURT, OF HIS APPOINTMENT AS APPELLATE COUNSEL, AND THAT HE WAS AWARE OF THE FACT THAT PETITIONER HAD BEEN CONVICTED AND SENTENCED TO "A LOT OF TIME".

PETITIONER, EXPRESSED HIS DESIRE TO PURSUE A MOTION FOR NEW TRIAL TO APPELLATE COUNSEL, AND TRIED TO SHARE SOME CRITICAL DETAILS WITH COUNSEL, HIGHLIGHTING SOME NEGATIVE ASPECTS OF THE TRIAL THAT NEEDED TO BE INVESTIGATED, AND/OR POSSIBLY INCLUDED IN THE MOTION.

PETITIONER WAS SHARPLY INTERRUPTED BY COUNSEL, WHERE COUNSEL INFORMED PETITIONER THAT HE HAD "JUST COME FROM GIVING PLASMA" AND THAT HE HAD "BEEN IN TRIAL ALL WEEK" AND AS A RESULT WAS "EXHAUSTED".

COUNSEL WENT ON TO INFORM PETITIONER THAT HE WAS "CURRENTLY IN THE PROCESS OF MOVING OFFICES AND DID NOT HAVE A MAILING ADDRESS TO GIVE" TO PETITIONER, AND DIRECTED PETITIONER TO WRITE DOWN ON A SHEET OF PAPER WHAT HE THOUGHT NEEDED TO BE INCLUDED IN THE MOTION AND THAT HE (COUNSEL) WOULD "BE BACK NEXT WEEK (JUNE 2, 2021) TO PICK IT UP."

PETITIONER HAVING NO REASON TO DOUBT COUNSEL'S REPRESENTATIONS BELIEVED THAT COUNSEL WOULD RETURN TO ASSIST HIM WITH PREPARING THE MOTION.

THE 30-DAY WINDOW FOR FILING THE MOTION FOR NEW TRIAL CAME AND WENT WITHOUT COUNSEL RETURNING TO THE JAIL TO CONFERENCE, INVESTIGATE,

ADVISE, AND/OR FILE A MOTION FOR NEW TRIAL.
PETITIONER, BEING UNSKILLED IN LAW,
AND UNAIDED BY COUNSEL FILED A PRO SE
MOTION FOR NEW TRIAL, PRIOR TO THE 30-DAY
DEADLINE, FOR THE SOLE PURPOSE OF PRESERVING
FOR THE RECORD, THE FACT THAT PETITIONER DID
WANT THE PROCEEDING. SEE (APPENDIX E)

PETITIONER, PRESUMES BECAUSE HE WAS
REPRESENTED BY COUNSEL, IN THEORY ONLY, AND
NO HEARING WAS HELD, THE TRIAL COURT CHOSE
TO LET THE MOTION BE DENIED BY THE OPERATION
OF LAW.

IN JULY OF 2021, PETITIONER HAD HIS FIRST
ATTORNEY/CLIENT CONFERENCE WITH CANLAS, POST-
30-DAY WINDOW FOR FILING NEW TRIAL MOTION,
WHERE PETITIONER CONFRONTED COUNSEL ABOUT
HIM ABANDONING HIM DURING THE MOTION FOR
NEW TRIAL PHASE, AND HIS ACTIONS OF FORGOING THE
PROCEEDINGS.

COUNSEL FAILED TO PROVIDE A REASONABLE
EXPLANATION FOR HIS ACTIONS, LEAVING PETITIONER
WITH THE IMPRESSION THAT COUNSEL WAS BEING
DISINGENUOUS IN HIS REPRESENTATIONS, WHERE
COUNSEL SEEMED TO DOWNPLAY PETITIONER'S CONCERNS.

PETITIONER, AFTER REFLECTING ON THE CHAINS
OF EVENTS THAT LED TO HIS MOTION FOR NEW
TRIAL PHASE BEING LOST, BEGAN TO ATTRIBUTE
COUNSEL'S ACTIONS TO EXTRINSIC FRAUD, AND A
WIDER CONSPIRACY TO DEPRIVE PETITIONER OF
HIS CONSTITUTIONAL RIGHTS.

DEPRIVATION OF "FULL AND FAIR" OPPORTUNITY TO LITIGATE, DUE PROCESS, AND EQUAL PROTECTION

IN JULY OF 2024, PETITIONER FILED AN APPLICATION FOR WRIT OF HABEAS CORPUS IN THE STATE TRIAL COURT, PURSUANT TO ART. 11.07 OF THE TEXAS CODE OF CRIMINAL PROCEDURE, RETURNABLE TO THE COURT OF CRIMINAL APPEALS, ALLEGING "APPELLATE COUNSEL ABANDONED APPLICANT DURING MOTION FOR NEW TRIAL PHASE IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS RIGHT TO COUNSEL, AND DUE PROCESS".

THE STATE OF TEXAS IN ITS ANSWER TO PETITIONER'S WRIT APPLICATION, MISCONSTRUED PETITIONER'S CLAIM AS BEING ONE OF "INEFFECTIVE ASSISTANCE OF COUNSEL" SUBJECT TO THE STRICKLAND V. WASHINGTON ANALYSIS, EVEN THOUGH PETITIONER SPECIFICALLY ALLEGED THE "RIGHT TO COUNSEL".

THE STATE, AFTER SCREENING PETITIONER'S WRIT APPLICATION, AND APPLYING THE STRICKLAND ANALYSIS, CONCLUDED THAT PETITIONER DID NOT MEET THE PREJUDICE PRONG OF STRICKLAND, WHERE HE FAILED TO PROVIDE PLAUSIBLE GROUNDS TO BE INCLUDED IN THE MOTION FOR NEW TRIAL, AND DRAFTED A PROPOSED ORDER OF RECOMMENDATION ASKING THE TRIAL COURT TO DENY THE WRIT APPLICATION WITHOUT CONDUCTING AN EVIDENTIARY HEARING.

IN AUGUST OF 2024, THE TRIAL COURT ADOPTED THE STATE'S RECOMMENDATION AND FORWARDED THE APPLICATION TO THE COURT OF CRIMINAL APPEALS WITHOUT ORDER AFFIDAVITS FROM COUNSEL OR HOLDING AN EVIDENTIARY HEARING.

DURING THIS SAME PERIOD OF TIME (THE FILING AND PENDENCY OF PETITIONER'S 11.07 WRIT APPLICATION), PETITIONER BEING A 'POLITICAL PRISONER', AND LEGAL BEGAL', WITH THE MAJORITY OF HIS DAYS DEDICATED TO THE PRISON'S LAW LIBRARY, SHARED THE STATUS OF HIS WRIT APPLICATION WITH FELLOW INMATES ROBERT FELTUS, AND DARIUS LEMON, WHO BEING FROM ENTIRELY DIFFERENT COUNTIES, DIVULGED THAT THEY TOO HAD RECENTLY FILED WRIT OF HABEAS APPLICATIONS WITH THEIR TRIAL COURT'S WITHIN THE PREVIOUS 12 TO 18 MONTHS OF PETITIONER'S FILING.

FELTUS, AND LEMON WENT ON TO DISCLOSE THAT THEY TOO HAD INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS AND HAD HIRED THE SAME ATTORNEY TO ASSIST THEM WITH THE FILING OF THEIR WRIT OF HABEAS APPLICATIONS.

FINALLY, BOTH INMATES DISCLOSED THAT THEY HAD BEEN GRANTED EVIDENTIARY HEARINGS TO DEVELOP THE FACTUAL BASIS FOR THEIR CLAIMS.

IN OCTOBER OF 2024, THE COURT OF CRIMINAL APPEALS DENIED PETITIONER'S 11.07 WRIT APPLICATION WITHOUT WRITTEN ORDER ("WHITE CARDEN").

REASONS FOR GRANTING THE PETITION

PETITIONER'S CASE PRESENTS A UNIQUE SET OF FACTS THAT SPEAKS TO THE FUNDAMENTAL SAFEGUARDS THAT ARE SUPPOSE TO BE AFFORDED ALL CRIMINAL DEFENDANTS IN THE COURSE OF A CRIMINAL PROCEEDING. SPECIFICALLY, THE RIGHT TO COUNSEL, DUE PROCESS, AND EQUAL PROTECTION OF LAW.

THIS COURT IN UNITED STATES V. CRONIC, 466 U.S. 648 HAS ALREADY STATED "IF COUNSEL ENTIRELY FAILS TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING, THEN THERE HAS BEEN A DENIAL OF RIGHTS UNDER U.S. CONST. 6TH THAT MAKES THE ADVERSARY PROCESS ITSELF PRESUMPTIVELY UNRELIABLE. NO SPECIFIC SHOWING OF PREJUDICE IS REQUIRED"; AND IN ROE V. FLORES-ORTEGA, 528 U.S. 470 "IT IS UNFAIR TO REQUIRE AN INDIGENT, PERHAPS PRO SE, DEFENDANT TO DEMONSTRATE THAT HIS HYPOTHETICAL APPEAL MIGHT HAVE HAD MERIT BEFORE ANY ADVOCATE HAS EVER REVIEWED THE RECORD IN HIS CASE IN SEARCH OF POTENTIALLY MERITORIOUS GROUNDS FOR APPEAL. RATHER, WE REQUIRE THE DEFENDANT TO DEMONSTRATE THAT, BUT FOR COUNSEL'S DEFICIENT CONDUCT, HE WOULD HAVE APPEALED."

EVEN THOUGH THE COURT HAS SET LONGSTANDING PRECEDENT IN THE SIXTH AMENDMENT RIGHT TO COUNSEL CONTEXT. THERE STILL REMAINS SOME SMALL AREAS OF UNCERTAINTY THAT DEMANDS THE COURT'S ATTENTION FOR CLARITY, LIKE THE LEVEL OF RESPONSIBILITY OWED A CRIMINAL DEFENDANT, WHO HAS IMPELMISSIBLY BEEN FORCED TO REPRESENT HIMSELF AT TRIAL AND/OR HAS ELECTED TO REPRESENT HIMSELF AT TRIAL, UPON THE CONCLUSION OF HIS CONVICTION AND SENTENCE, ONCE HE IS APPOINTED COUNSEL TO ASSIST HIM WITH APPELLATE MATTERS.

PETITIONER, BEING INDIGENT AND UNABLE TO AFFORD THE COST OF A LAWYER'S SERVICES, MUST HAVE FAITH THAT THE STATE'S AND/OR COUNTY'S INDIGENT DEFENSE AND/OR CRIMINAL JUSTICE SCHEME WILL AFFORD PROCESSES IN LINE WITH THE UNITED STATES CONSTITUTION.

EMBEDDED IN THE DUE PROCESS CLAUSE IS THE 'FULL AND FAIR' OPPORTUNITY TO LITIGATE. BUT A CRIMINAL DEFENDANT, SUCH AS PETITIONER, WITH IMPECCABLE FACTS AND THE LAW ON HIS SIDE WILL ALMOST NEVER HAVE HIS DAY IN COURT. WHERE HE'S LIKELY TO SUCCEED ON THE MERITS, IF THE STATE'S POLICIES AND/OR PRACTICES ARE MORE CONCERNED WITH A DEFENDANT'S ABILITY TO PAY THAN PROVIDING AN ADEQUATE CONCLUSION TRUTH SEEKING PROCESS.

PETITIONER PRAYS THAT THE COURT GRANT AN ORAL ARGUMENT WHERE HE WILL BETTER DEMONSTRATE THE URGENT NEED FOR THE COURT'S INTERVENTION IN THESE MATTERS.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dwayne Lee Walker

Date: MARCH 8, 2025