No. 25-

IN THE

Supreme Court of the United States

JUSTIN BAGGETT,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JOSH BARRETT SCHAFFER
Counsel of Record
1021 Main Street, Suite 1440
Houston, TX 77002
(713) 951-9555
josh@joshschafferlaw.com

Counsel for Petitioner

120665

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Charged with child sex offenses, petitioner insisted he was innocent and would not plead guilty. While preparing for trial, the State disclosed that the outcry witness had "a record" and "did her time." Defense counsel did not investigate the witness's criminal history. She had federal convictions and received mental health treatment as a condition of release. Petitioner did not know this information or its potential use at trial when he agreed to plead no contest for 16 years in prison.

The state habeas court concluded that counsel were not ineffective in failing to investigate this impeachment evidence because they were in plea discussions when they learned it may exist. Lower courts are divided over the scope of counsel's duty to investigate impeachment evidence before a defendant pleads. At issue is when the complete failure to investigate potential impeachment evidence can be strategic. Although it can be sound to advise a defendant to plead quickly, *Premo v. Moore*, 562 U.S. 115 (2011), this Court has not addressed when counsel's duty to investigate ends, especially in the "late plea" context. The question presented is:

I. Whether trial counsel's failure to investigate and discover impeachment evidence against a key prosecution witness before a defendant accepts a plea agreement constitutes ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984).

RELATED CASES

- *State of Texas v. Baggett*, No. CR16000155-H, 347th District Court, Nueces County, Texas. Judgment entered September 22, 2016.

- *Ex parte Baggett*, No. CR16000155-H(1), 347th District Court, Nueces County, Texas. Findings and Order entered April 14, 2025.

- *Ex parte Baggett*, No. WR-96,337-01, Texas Court of Criminal Appeals. Judgment entered May 14, 2025.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Constitutional Provisions

Statutes and Rules

Page

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Justin Baggett, respectfully petitions for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals (TCCA).

OPINIONS BELOW

The TCCA's unpublished denial of habeas corpus relief without written order (App. 1) is unreported. The state district court's findings of fact and conclusions of law and order recommending that habeas corpus relief be denied (App. 2-12) is unreported. The state district court's judgment of conviction is unreported.

JURISDICTION

The TCCA denied relief on May 14, 2025. This Court extended the deadline to file this petition to October 14, 2025. It has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides, in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, "No State shall . . . deprive any person of . . . liberty . . . without due process of law. . . ."

STATEMENT OF THE CASE

A. Procedural History

Petitioner was charged with continuous trafficking of a child and continuous sexual abuse of a child in the 347th District Court of Nueces County, Texas. Pursuant to a plea agreement, he pled no contest to the lesser offenses of trafficking and indecency by contact; and the trial court assessed punishment at 16 years in prison on September 22, 2016. Petitioner did not appeal.

Petitioner filed a state habeas corpus application on July 1, 2024. The trial court, after conducting an evidentiary hearing, recommended that relief be denied on April 14, 2025. The TCCA denied relief without written order on May 14, 2025. *Ex parte Baggett*, No. WR-96,337-01 (Tex. Crim. App. May 14, 2025).

B. Relevant Facts

Petitioner was dating Maria Veronica Gomez in Corpus Christi in 2015.[1] Maria Veronica had two daughters, L.G. (age 12) and S.G (age 9). She also had a sister, Jessica Gomez, who lived in Laredo.

Jessica reported in December of 2015 that she had traveled to Corpus Christi to visit family and that L.G. and S.G. told her that petitioner had sexually abused them over a period of months in 2015.

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1. Petitioner refers to Gomez as "Maria Veronica" to distinguish her from her sister, Jessica Gomez, and her mother, Maria Martha Gomez.

L.G. told a CPS caseworker that Maria Veronica would take her and S.G. to petitioner's house; make her shower with petitioner; and that he would penetrate her vagina with his finger, force her to touch his genitals, and had intercourse with her on the bathroom floor. S.G. also told a CPS caseworker that Maria Veronica would take her and L.G. to petitioner's house; make her shower with petitioner; and that he would penetrate her vagina with his finger, force her to touch his genitals, and stand behind her and place his penis between her legs.

Neither L.G. nor S.G. knew how many times they went to petitioner's house or how many times he assaulted them. Both girls asserted that Maria Veronica would physically assault them if they refused to shower with petitioner.

When the police interviewed Maria Veronica, she denied any knowledge of petitioner sexually abusing her daughters.

Petitioner agreed to be interviewed. When the police told him the allegations, he appeared surprised and shocked. He could not provide any reason why someone would fabricate the allegations. He eventually asked to speak with a lawyer, and the police ended the interview and allowed him to leave.

Both petitioner and Maria Veronica were charged with abusing L.G. and S.G. Petitioner hired Edward Chernoff and William Stradley to represent him. He told them that he was innocent and wanted a trial (AX 1, AX2, AX 3).

The State produced discovery to the defense electronically. It filed notice of its intent to present outcry testimony through Jessica Gomez.

Chernoff and Stradley reviewed the discovery, and Chernoff wrote a detailed memorandum to the case file evaluating the evidence and issues in anticipation of trial (AX 1, AX 2). No medical or forensic evidence corroborated the allegations. They concluded that the outcome of a trial probably would turn on whether the jury believed the testimony of the prosecution witnesses—namely Jessica Gomez and the complainants.

The trial court set a deadline of July 29, 2016, for petitioner to accept a plea agreement. He did not plead, and the parties entered August preparing for trial.

The prosecutor, Rebecca Lake, met with the complainants and Jessica on August 5, 2016 (AX 4). During the meeting, Jessica reported as follows:

> [Jessica] stated that she has told her sister [Maria Veronica] that she needs to accept the time for what she did and just do her time. ***Jessica admitted she has a record for trafficking illegals, and that she accepted it and did her time.***

A witness summarized the meeting in a page of notes dated August 6, 2016 (AX 4) (emphasis added).

Lake sent Stradley an email on August 9, 2016, that simply stated, "Please see the attached discovery" (AX 2, AX 5). Attached to the email was the one-page summary of the interviews conducted on August 5, 2016 (AX 2). Stradley forwarded the email and attachment to Chernoff (AX 1, AX 2). However, the State never disclosed to Chernoff or Stradley any specific criminal history of

Jessica, including the charge, the jurisdiction, the cause number, the relevant dates of the case, and the disposition (AX 1, AX 2). Neither Chernoff nor Stradley told petitioner that Jessica had a criminal record, nor that she told Lake that she had a "record for trafficking illegals" and "did her time" (AX 3).

Chernoff and Stradley told petitioner that the State was offering a plea bargain for 16 years in prison (AX 1, AX 2, AX 3). Petitioner insisted that he was innocent and would not plead guilty (AX 3). The State and the trial court agreed that he could plead no contest (AX 1, AX 2, AX 3).

Petitioner accepted the State's plea agreement and pled no contest to the reduced offenses of trafficking and indecency by contact on September 22, 2016 (AX 6 at 6). The trial court convicted him and assessed punishment at 16 years in prison pursuant to the plea agreement (AX 6 at 14). Petitioner never admitted guilt or judicially confessed that he committed any offenses (AX 1, AX 2, AX3, AX 6).

Years later, habeas counsel reviewed the State's file and discovered the summary of Lake's interviews with the complainants and Jessica (AX 4). When he read that Jessica stated that she had "a record for trafficking illegals" and "did her time," he suspected that she had a criminal history that did not appear elsewhere in the State's file or in its discovery to the defense. He ran her in PACER, the official public records database of the federal court system, and discovered that she had federal criminal history in Texas. He then reviewed those public records.

Federal prosecutors charged Jessica Gomez with illegally transporting undocumented aliens in 2010 (AX 7).

The offense carried up to 10 years in prison, a $250,000 fine, and three years of supervised release (AX 8). She pled guilty to aiding and abetting the illegal entry of a Mexican alien, and the court assessed punishment at one year probation in 2010 (AX 9, AX 10).

While on probation, a federal grand jury indicted Jessica for conspiracy and illegally transporting undocumented aliens in 2011 (AX 14). The offenses carried up to 10 years in prison, a $250,000 fine, and three years of supervised release (AX 14). A petition to revoke her probation was filed (AX 11). She pled guilty to illegally transporting an undocumented alien pursuant to a plea agreement in 2011 (AX 15).

At sentencing, the district court assessed Jessica's punishment at 15 months in prison on the 2011 case and revoked her probation and assessed punishment at one month in prison on the 2010 case, for a total of 16 months in prison on both cases (AX 12, AX 16). The court assessed a three-year term of supervised release after she served the prison sentences. Critical to petitioner's case, the court imposed a "special condition" that she participate in a mental health program (AX 16 at 4).

After serving her prison sentences, Jessica began her supervised release in 2012 (AX 17). The federal probation department filed a violation report alleging that she failed to comply with the conditions of release. Among several violations, she specifically failed to participate in a mental health program and failed "to submit a truthful and complete written report." The probation department recommended, and the court agreed, that she remain on supervised release so she could participate in mental health counseling. Jessica likely completed supervised

release only eight months before she reported the complainants' outcries in December of 2015.

Chernoff and Stradley did not know that Jessica was convicted of a federal felony and served a prison sentence, nor did they know that a federal court placed her on a mental health caseload as a condition of release (AX 1, AX 2). The State did not disclose that specific information to them. They would have noted it in their files and remembered it. They did not have any *Brady v. Maryland* disclosures from the State in their files. Had the State disclosed that information to them, they would have researched it and notified petitioner of it. They would have told him that, if he rejected the plea offer and went to trial, they could impeach Jessica with her criminal convictions and mental health issues. They also would have told him that they could argue to the jury that she was incredible and encouraged the complainants to fabricate the allegations. The State's failure to disclose this information prevented them from advising petitioner on the issue before he decided to accept the plea offer.

Petitioner did not know that Jessica went to federal prison before he was charged (AX 3). He did not know that a federal court placed her on a mental health caseload as a condition of release. No one told him that information before he accepted the plea offer and pled no contest. He did not know that, if he rejected the plea offer and went to trial, his lawyers could impeach Jessica with her criminal history and mental health issues and argue to the jury that she was incredible and that she encouraged the children to make false allegations. Had he known that information, he would have rejected the plea offer, pled not guilty, and gone to trial.

Maria Veronica Gomez, the children's mother and petitioner's co-defendant, testified at the habeas corpus evidentiary hearing that she did not personally know if petitioner committed these crimes, that she did not help him commit these crimes, and that she did not commit these crimes. She would have so testified if called as a witness had petitioner gone to trial.[2]

C. The State Habeas Court's Decision

Petitioner alleged in the state habeas corpus proceeding that his no-contest plea was involuntary for two reasons. First, the State engaged in prosecutorial misconduct in failing to disclose Jessica Gomez's criminal history and mental health issues. Second, counsel was ineffective in failing to investigate, discover, and explain this information to petitioner before he accepted the plea agreement. The state habeas trial court conducted an evidentiary hearing and adopted *verbatim* the State's proposed findings of fact and conclusions of law recommending that relief be denied (App. 2-12).

Regarding the prosecutorial misconduct ground, the trial court found that Lake, the prosecutor, disclosed the fact that Jessica had a criminal record to Stradley, defense counsel, before petitioner accepted the plea agreement; that Stradley received that disclosure; and that Lake did not have access to Jessica's criminal records because records from her federal cases were not under state control (App. 2-3). The trial court concluded that petitioner did not prove that his conviction resulted from prosecutorial

2. The state habeas trial court did not credit Maria Veronica's testimony on these issues.

misconduct because Lake disclosed that Jessica had criminal history and Lake did not possess evidence of Jessica's mental health issues (App. 10). Moreover, any misconduct was immaterial (App. 11).

Regarding the ineffective-assistance claim, the trial court found that counsel did not investigate Jessica's criminal history because "they 'were well into plea discussions and it looked as though it was going in that direction'" (App. 4). It found that evidence of Jessica's criminal history and mental health issues would not have had impeachment value had petitioner gone to trial (App. 6-7), and that defense counsel would have advised him to accept the plea agreement even had they known about her criminal history and mental health issues (App. 7-8). The trial court concluded that counsel did not perform deficiently in failing to investigate Jessica's criminal and mental health history and that any deficiency did not result in prejudice (App. 10-11).

The TCCA denied habeas corpus relief based on the trial court's findings and its independent review of the habeas record (App. 1).

REASON FOR GRANTING CERTIORARI

The Court should grant certiorari to resolve the lower court split regarding whether trial counsel's failure to investigate and discover impeachment evidence against a key prosecution witness before a defendant accepts a plea agreement constitutes ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984).

I. Lower Courts Are Divided On Whether Trial Counsel's Failure To Investigate And Discover Impeachment Evidence Against A Key Prosecution Witness Before A Defendant Accepts A Plea Agreement Constitutes Ineffective Assistance Of Counsel.

Petitioner's no-contest plea was involuntary because trial counsel were ineffective in failing to investigate and discover impeachment evidence regarding Jessica Gomez's criminal history and mental health and advise him that it provided a basis to defend the case.

A. Standard of Review

Petitioner had a right to the effective assistance of counsel at trial. U.S. Const. amends. VI and XIV; *Powell v. Alabama*, 287 U.S. 45 (1932). Counsel must act within the range of competence demanded of counsel in criminal cases. *McMann v. Richardson*, 397 U.S. 759 (1970).

In *Strickland v. Washington*, 466 U.S. 668 (1984), this Court established the federal constitutional standard to determine whether counsel rendered reasonably effective assistance. The defendant must show that counsel's performance was deficient—that counsel made errors so serious that he was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense—that counsel's errors were so serious as to deprive the defendant of a fair trial with a reliable result.

The defendant must identify specific acts or omissions of counsel that are alleged not to have been the result

of reasonable professional judgment. The reviewing court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the range of professionally competent assistance. Ultimately, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

The *Strickland* standard applies to a no-contest plea. Where a defendant contends that he pled no contest in reliance on counsel's incorrect advice, he must show that the advice fell below an objective standard of reasonableness and that, but for that advice, there is a reasonable probability that he would have pled not guilty. *Cf. Hill v. Lockhart*, 474 U.S. 52, 59 (1985). A no-contest plea induced by counsel's material misrepresentation is involuntary. *Brady v. United States*, 397 U.S. 742, 755 (1970). An involuntary plea must be set aside as a denial of due process of law. U.S. CONST. amends. V and XIV; *Boykin v. Alabama*, 395 U.S 238 (1969).

B. The Lower Court Split

Lower courts are divided regarding whether trial counsel's failure to investigate and discover impeachment evidence against key prosecution witnesses before a defendant accepts a plea agreement constitutes ineffective assistance of counsel under the deficient performance prong of *Strickland v. Washington*. While courts uniformly apply the *Hill v. Lockhart* prejudice standard requiring a showing that the plea outcome would have

been different, they diverge significantly on the scope of counsel's pre-plea investigation duties.

The federal circuits have developed distinct approaches to evaluating counsel's duty to investigate potential impeachment evidence before plea agreements, creating meaningful differences in how ineffective assistance claims are analyzed. The D.C. Circuit has established the most demanding standard, holding that the complete failure to investigate potential impeachment evidence cannot be a strategic decision and requiring investigation when counsel learns that such evidence may exist. *United States v. Mohammed*, 863 F.3d 885, 890-91 (D.C. Cir. 2017) (applying standard from *Wiggins v. Smith*, 539 U.S. 510, 527 (2003), requiring courts to consider not only quantum of evidence already known to counsel, but also whether known evidence would lead reasonable attorney to investigate further).[3]

By contrast, the Eighth Circuit takes a markedly different approach and provides greater deference to counsel's strategic judgments, holding that counsel has no duty to undertake any investigation that, in their reasoned judgment, does not have promise. *Harvey v. United States*, 850 F.2d 388, 400 (8th Cir. 1988) (counsel not ineffective in failing to investigate prosecution rebuttal

3. The Fifth Circuit applies a similarly rigid standard where counsel fails to conduct any pretrial investigation into evidence that would benefit the defense. *See Bouchillon v. Collins*, 907 F.2d 589, 595-97 (5th Cir. 1990) (counsel who failed to investigate defendant's medical and mental history after learning of prior hospitalizations and advised defendant to plead guilty was constitutionally ineffective in failing to conduct investigation where no other available defense existed).

witness where defendant decided to plead guilty one day after learning how witness would testify and failed to prove that investigation into witness's credibility would have caused him to go to trial).

Meanwhile, the Seventh Circuit occupies a nuanced middle position, recognizing that an 'appropriate' investigation may be limited in early plea contexts. *United States v. Jansen*, 884 F.3d 649, 656-60 (7th Cir. 2018) (counsel's failure to investigate prosecution's case pretrial was reasonable where defendant hired counsel for express purpose of negotiating plea agreement and not to try case). *But see Brown v. Sternes*, 304 F.3d 677, 693-98 (7th Cir. 2002) (noting that "[a]ttorneys have an obligation to explore all readily available sources of evidence that might benefit their client[,]" and concluding that counsel who had access to defendant's medical records "had a professional obligation to do an in-depth investigation into their client's deep-seated psychiatric problems"; failure to do so was ineffective).

The Seventh Circuit's "early plea" rule in *Jansen* aligns with this Court's decision in *Premo v. Moore*, 562 U.S. 115, 126-27 (2011) (counsel not ineffective under federal habeas AEDPA standard in advising defendant to enter quick guilty plea instead of moving to suppress confession, where other incriminating evidence existed even if court excluded confession). In *Moore*, this Court emphasized the need for deference to counsel's *strategic* decisions in early plea contexts, noting that in the case of an early plea, neither the prosecution nor the defense may know with much certainty what course the case may take. In contrast to the "early plea" scenario in *Jansen* and *Moore*, petitioner's case was headed toward a jury

trial, as he maintained his innocence and refused to plead guilty, and the deadline to accept a plea agreement had passed. That critical fact tilts against application of *Jansen* and *Moore* to petitioner's case. And this Court has never addressed what duty to investigate applies to a "late plea" context.

Ironically, Texas usually requires counsel to conduct an adequate pretrial investigation into potential favorable trial evidence even where the defendant eventually pleads guilty. *See Ex parte Briggs*, 187 S.W.3d 458, 467-69 (Tex. Crim. App. 2005) (counsel ineffective in failing to hire medical expert to review evidence before advising defendant to plead guilty where reason for failure to investigate was economic rather than strategic). The TCCA did not apply the same rigorous analysis to petitioner's case.

Hovering above this inquiry at all times, the applicable ABA standard should factor into resolving this conflict among lower courts:

> "Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty."

ABA Standards for Criminal Justice: The Defense Function, Standard 4–4.1 (3d ed. 1993).

This Court has expanded the Sixth Amendment right to the effective assistance of counsel to the critical stage of plea negotiations. *Missouri v. Frye*, 566 U.S. 134 (2012); *Lafler v. Cooper*, 566 U.S. 156 (2012). But those cases focused primarily on counsel's duty to communicate with the defendant rather than the scope of counsel's duty to conduct an adequate investigation in cases where the defendant ends up pleading instead of going to trial. Lower courts continue to grapple with applying these different standards, particularly in cases involving plea discussions, where the tension between investigation duties and strategic timing considerations is most acute. The Court should grant certiorari to resolve the lower court split and announce a uniform standard for counsel's constitutional duty to conduct an adequate pretrial investigation before advising the defendant whether to accept a plea offer.

C. Counsel's Ineffective Assistance And Petitioner's Involuntary Plea

One week after the trial court's deadline had passed for petitioner to accept a plea agreement, the prosecutor, Rebecca Lake, met with the complainants and Jessica Gomez (the outcry witness) to prepare for trial. A prosecution case memorandum documented that Jessica disclosed in the meeting that she "has a record for trafficking illegals, and that she accepted it and did her time." Lake emailed the memorandum to defense counsel, William Stradley, three days later with the simple message, "Please see the attached discovery" (AX 2, AX 5).

Stradley admitted that he received Lake's email but asserted that the State never provided a specific *Brady* disclosure of Jessica's prior criminal convictions that could be used for impeachment nor of her mental health issues. He admitted that he did not investigate the information contained in the memorandum, nor did he advise petitioner of the information.

Specifically, Jessica had prior federal convictions for aiding and abetting the illegal entry of a Mexican alien in 2010 (AX 10, 12) and illegally transporting undocumented aliens in 2011 (AX 16). A district court assessed her punishment at 16 months in prison (AX 12, 16). It assessed a three-year term of supervised release and imposed as a "special condition" that she participate in a mental health program (AX 16 at 4). She failed to participate in the program and failed "to submit a truthful and complete written report" (AX 17). She remained on supervised release so she could receive mental health counseling. She likely completed that term only eight months before she reported the complainants' outcries in December of 2015.

Counsel did not know that Jessica was convicted of a federal felony and served a prison sentence, nor did they know that a federal court placed her on a mental health caseload as a condition of release (AX 1, AX 2). Had they known, they would have researched the cases and notified petitioner. They would have told him that, if he rejected the plea offer and went to trial, they could impeach Jessica with her convictions and mental health isues. They also would have told him that they could argue to the jury that she was incredible and encouraged the complainants to fabricate the allegations. They admitted that their failure to investigate and discover this information prevented

them from advising petitioner on the issue before he decided to accept the plea agreement.

Petitioner did not know that Jessica had been to federal prison (AX 3). He did not know that a federal court placed her on a mental health caseload as a condition of release. No one told him that information before he accepted the plea offer and agreed to plead no contest. He did not know that, if he rejected the plea offer and went to trial, his lawyers could impeach Jessica with her criminal history and mental health issues and argue to the jury that she was incredible and that she encouraged the children to make false allegations. Had he known that information, he would have rejected the plea agreement, pled not guilty, and gone to trial.

The TCCA adopted the habeas trial court's finding—proposed by the State—that counsel did not investigate Jessica's criminal history because "they 'were well into plea discussions and it looked as though it was going in that direction'" (App. 4). However, the record established that the deadline for petitioner to accept a plea agreement had expired and that the prosecution was meeting with its witnesses to prepare for trial. The plea acceptance deadline was July 29, 2016; Lake emailed Stradley about Jessica's criminal history on August 9, 2016; and petitioner entered the plea agreement on September 22, 2016. Six weeks passed between the date that counsel learned that the key outcry witness had criminal history and when petitioner pled no contest.

The TCCA also adopted the findings that Jessica's criminal history and mental health issues would not have had impeachment value at a trial (App. 6-7), and that

defense counsel would have advised petitioner to accept the plea agreement even had they known this information (App. 7-8). The TCCA adopted the conclusion that counsel did not perform deficiently in failing to investigate Jessica's criminal and mental health history and that any deficiency did not result in prejudice (App. 10-11).

The TCCA essentially found that counsel did not perform deficiently in failing to investigate and discover impeachment evidence that they knew existed because counsel had *begun* to discuss a plea agreement with the prosecution. This finding raises an important constitutional question: When does counsel's duty to investigate and discover favorable trial evidence end? The TCCA would have counsel's duty to investigate impeachment evidence end as soon as counsel begins negotiating a plea agreement with the State, even where both sides are preparing for an imminent trial setting. But that cannot be the constitutional standard because, if a defendant rejects the plea offer and goes to trial, counsel's duty to investigate and discover that impeachment evidence still exists, as they have a duty to impeach the witness at trial.

The practical reality is that the period of time when counsel is both preparing for trial and discussing a plea agreement is fluid. Until the defendant decides to go to trial or plead, counsel often cannot know with certainty which will happen. That was especially true here, where petitioner insisted all along that he was innocent and would not plead guilty. And because the choice whether to go to trial or plead belongs to the defendant only, counsel must continue to prepare for trial until the defendant decides to plead. This is true even if counsel is advising the defendant to accept the plea agreement and forego a trial. Many

defense lawyers view the decision whether to accept a plea agreement from the standpoint of risk mitigation, whereas many defendants view it as a bright-line question of guilt or innocence.

That is exactly what happened here. Petitioner insisted all along that he was innocent and would not plead guilty. Counsel viewed the plea agreement as a reasonable reduction of the risk of conviction that he faced if he went to trial and the risk of a lengthy sentence if convicted. Counsel thought that the outcome of a trial depended on whether the jury found the complainants and Jessica credible in a case with no physical evidence, eyewitnesses, or confession. And that is exactly why Jessica's impeachment evidence was so important to petitioner's decision whether to go to trial or plead.

An important constitutional policy should require that counsel's duty to investigate and discover impeachment evidence continues throughout plea negotiations and up to when the defendant decides to accept the plea agreement. If the defendant decides to plead guilty or no contest, that plea must be legally voluntary. Counsel must advise him of the anticipated trial evidence, how the law applies to the facts of the case, and the plausible outcomes of a trial. For counsel to give accurate advice, and for the defendant's decision to forego a trial and accept a plea offer to be voluntary, counsel must complete the pretrial investigation. That includes investigating and discovering potential impeachment evidence of key prosecution witnesses, especially where that evidence would favor the defensive theory. If a defendant foregoes a trial because counsel failed to investigate, discover, and advise him of evidence that probably would have caused him to plead not

guilty and go to trial, the decision to plead is involuntary. *Hill v. Lockhart*, 474 U.S. at 59.

Here, the State placed counsel on notice that Jessica, a key prosecution witness, had "served time." Counsel learned that six weeks before petitioner pled no contest. At no time during the intervening six weeks did counsel investigate Jessica's publicly available criminal history. Had they done so, they would have discovered her federal convictions and mental health issues, both of which would have been admissible at trial to show that she was incredible. Counsel could have argued that, in light of her felony status and mental health issues, she likely caused the complainants to fabricate the allegations. Because counsel failed to conduct this pretrial investigation, they did not discover the impeachment evidence or advise petitioner of it. And because he did not know about it and how counsel could use it at trial, his decision to accept the plea agreement was involuntary.

This Court should grant certiorari because the TCCA has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10(c).

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Josh Barrett Schaffer
Counsel of Record
1021 Main Street, Suite 1440
Houston, TX 77002
(713) 951-9555
josh@joshschafferlaw.com

Counsel for Petitioner

October 2025

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OFFICIAL NOTICE FROM THE COURT OF CRIMINAL APPEALS OF TEXAS, FILED MAY 14, 2025

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

5/14/2025 Tr. Ct. No. CR16000155-H(1)
BAGGETT, JUSTIN WR-96,337-01
This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court and on the Court's independent review of the record.

Deana Williamson, Clerk

DISTRICT CLERK NUECES COUNTY
BOX 2987
CORPUS CHRISTI, TX 78403
* DELIVERED VIA E-MAIL *

APPENDIX B — FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE DISTRICT COURT, 347TH JUDICIAL DISTRICT, NUECES CO., TX, ENTERED APRIL 14, 2025

IN THE DISTRICT COURT
347TH JUDICIAL DISTRICT
NUECES CO., TX

CAUSE NO: CR16000155-H(1)
TDCJ-ID: # 02093981

EX PARTE

JUSTIN BAGGETT

Entered April 14, 2025

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

Prosecutorial Misconduct.

1. The Court finds credible the testimony of the trial prosecutor, Rebecca Lake, that she first learned about the criminal history of witness Jessica Gomez when she documented a statement made to her by Jessica on August 5, 2016, to the effect that she had a criminal record for trafficking illegals, which Lake understood to be a federal offense (RR Writ Hearing vol. 2, pp. 26-28), and that, within the next two business days, Lake informed the defense of this in an email on August 9, 2016. (RR

Writ Hearing vol. 2, pp. 32, 52-53) The Court further finds credible Lake's testimony that PACER is a federal criminal records database that she did not have access to, but that it is a public website that requires payment and billing information before using it (RR Writ Hearing vol. 2, pp. 47-49), and that PACER is maintained by the federal government and is not under the control of the State of Texas. (RR Writ Hearing vol. 2, p. 56) Finally, the Court finds credible Lake's testimony that the child victims' mother, Maria Gomez, ended up cooperating with the State before Baggett's plea was accepted and that her attorney indicated that Maria was willing to cooperate with the State. (RR Writ Hearing vol. 2, p. 57)

_√_ ADOPTED. ___ REFUSED.

2. The Court finds credible the testimony of Baggett's trial attorney, William Stradley, that he had received the email from Lake containing a statement by Jessica Gomez acknowledging that she had a record for trafficking illegals. (RR Writ Hearing vol. 2, pp. 86-87)

_√_ ADOPTED. ___ REFUSED.

Deficient Performance of Counsel.

3. The Court finds credible the testimony of Baggett's trial attorney, William Stradley, concerning his credentials, and specifically that he had been an attorney for 35 years and did virtually all criminal work on the defense side, that he was a specialist in sex cases (RR Writ Hearing vol. 2, pp. 74-75), that he was board certified in criminal

law in 1997, and that he was a speaker on topic related to child abuse and child sex abuse at the State Bar Advanced Criminal Law Seminar for three years between 2020 and 2024. (RR Writ Hearing vol. 2, pp. 99-100)

_√_ ADOPTED. ___ REFUSED.

4. The Court further finds credible Stradley's testimony that he represented Baggett in this case along with co-counsel Edward Chernoff (RR Writ Hearing vol. 2, pp. 75-76), that both he and Chernoff reviewed all of the discovery produced by the State (RR Writ Hearing vol. 2, p. 78), that Chernoff created a trial memo exhaustively analyzing, summarizing and evaluating the evidence, which represented their collective process. (RR Writ Hearing vol. 2, pp. 81 & 101; State's Exhibit# 1), and that it was his recollection that there was an issue as to who the proper outcry witness would be at trial and that the State's notice listed several potential outcry witnesses. (RR Writ Hearing vol. 2, pp. 116-17). The Court further finds credible Stradley's testimony that he did not do a PACER search because, among other things, they "were well into plea discussions and it looked as though it was going in that direction." (RR Writ Hearing vol. 2, p. 91) The Court further finds credible Stradley's testimony that he had tried to get in contact with Maria's lawyer on several occasions before Baggett accepted a plea, but that it was clear she was not interested in talking to him. (RR Writ Hearing vol. 2, p. 82)

_√_ ADOPTED. ___ REFUSED.

5. The Court finds credible the testimony of Baggett's trial attorney, Edward Chernoff, concerning his credentials, and specifically that he has been licensed as a lawyer since 1987, that he started his career with the Harris County DA's Office, and then in 1991 started a private practice focusing on criminal defense, that he has been board certified in criminal law since 1995, and that he has had prior experience with child sexual abuse cases. (RR Writ Hearing vol. 2, pp. 120-21, 138-39)

_√_ ADOPTED. ___ REFUSED.

6. The Court further finds credible Chernoff's testimony that Spradley brought him into the Baggett case and Chernoff took on the responsibility of summarizing and evaluating the evidence and potential defenses (RR Writ Hearing vol. 2, p. 122), that they had issues with, and uncertainty as to, who the outcry witness would be (RR Writ Hearing vol. 2, pp. 132 & 140), that "It appears that there is a problem identifying the outcry witness" (State's Exhibit # 1 page 6), and that Spradley probably had a lot more conversations with Baggett and his family and that Chernoff and Baggett did not speak independently. (RR Writ Hearing vol. 2, p. 139) The Court further finds credible a reference in Chernoff's summary of Maria Veronica Gomez's recorded statement to the police to the effect that Baggett himself got naked to take a shower with one of the child victims (State's Exhibit # 1 page 10), and an indication that Maria Gomez was "in jail and represented, so she is off limits currently." (State's Exhibit# 1 page 12)

_√_ ADOPTED. ___ REFUSED.

Appendix B

7. The Court finds from a review of the evidence available to the defense at the time Baggett accepted the State's plea offer, as summarized in States Exhibit # 1, that investigation of Gomez's criminal and mental health history would have been of limited value to the defense, and that a failure to investigate this matter before advising Baggett concerning the plea offer would not have risen to the level of deficient performance for purposes of the present claim of ineffective assistance of counsel. To that end, the Court finds that a viable defense strategy of impeaching Jessica Gomez's testimony would have to include at least a reasonable inference that not only did she lie about the outcry, but that she also had such power over the children as to compel them to accept a lie about Baggett and their mother sexually abusing them, and to continue to repeat that lie to other adults outside Jessica's presence, a theory which is nowhere mentioned or supported by evidence in State's Exhibit # 1.

_√_ ADOPTED. ___ REFUSED.

8. The Court does not find credible or relevant to the present issues the testimony of Maria Gomez that she was innocent of the crimes she pleaded guilty to, that she did not help Baggett sexually abuse her daughters, and that she did not personally know if Baggett committed these crimes. (RR Writ Hearing vol. 3, p. 8) To that end, the Court finds that the State successfully impeached Maria Gomez with the fact that she did not even remember the statement that she had made to the police incriminating Baggett. (RR Writ Hearing vol. 3, p. 17-18) Accordingly, the Court finds that her faded memory renders any

assertions that she made at the present writ hearing unreliable and suspect.

_√_ ADOPTED. ___ REFUSED.

Prejudice.

9. The Court finds credible the testimony of Baggett's trial attorney, William Stradley, to his opinion that the jury's verdict would come down to whether they believed the child victims and whether the mother testified as a witness after she took a plea deal (RR Writ Hearing vol. 2, pp. 81-82), that Jessica Gomez was not "on the top of the list of problems" or "the driving decision" at the time Baggett decided to accept the plea, and that the importance of impeaching her was diminished as a result of other evidence in the case (RR Writ Hearing vol. 2, pp. 106-07), and that he did not believe that more knowledge of the federal criminal case would have impacted or changed his advice to Baggett concerning the plea offer and that it was a good deal. (RR Writ Hearing vol. 2, pp. 107-110)

_√_ ADOPTED. ___ REFUSED.

10. The Court finds credible the testimony of Baggett's trial attorney, Edward Chernoff, to his belief that the most important evidence would be the testimony of the children and that "this case was always going to be about how the kids did on the stand" (RR Writ Hearing vol. 2, pp. 128 & 131), that Baggett's type of case typically did not tum on an outcry witness and that he thought 16 years was a very good plea bargain under the circumstances

(RR Writ Hearing vol. 2, p. 143), and that he thought his advice on the plea would have been the same even if they had known about Jessica Gomez's prior conviction and mental counseling. (RR Writ Hearing vol. 2, pp. 143-44)

_√_ ADOPTED. ___ REFUSED.

11. The Court does not find credible the testimony of Justin Baggett that had he known that his lawyers could impeach Jessica Gomez with both her criminal conviction and "her mental health issues," he would have rejected the plea bargain and gone to trial. (RR Writ Hearing vol. 2, pp. 156- 57, 162-63) In particular, the Court finds that Mr. Baggett's testimony lacks credibility in view of Baggett's admission that he had no legal training and that he would have talked to his lawyers about the prior conviction and mental counseling as it related to his decision to accept the plea (RR Writ Hearing vol. 2, pp. 158 & 165) and prior testimony by his lawyers that knowledge of the impeachment evidence in question would not have changed their advice on the plea, as well as the fact that the State successfully impeached Baggett with his lack of memory about such things as the original charges against him and the evidence that the State had against him, including statements the child victims made to the examining nurse and that Maria Gomez had accepted a plea and could be called to testify against him (RR Writ Hearing vol. 2, pp. 160-61) Further, the Court finds it incredible that the possibility for impeachment of a potential outcry witness would have changed Mr. Baggett's mind concerning acceptance of the plea offer in view of: (1) the objectively preferable option of a sixteen

year sentence with the possibility of parole, as opposed to a mandatory twenty-five-year to life sentence without the possibility of parole; (2) the overwhelming weight of the evidence of guilt, including the two complaining witnesses, indication that the mother would also testify to direct knowledge of the sexual abuse, as well as other outcry witnesses; and (3) lack of any other evidence to support a theory that Jessica Gomez had the inclination or ability to coerce the complaining witnesses to fabricate their allegations of abuse.

_√_ ADOPTED. ___ REFUSED.

Laches.

12. The Court finds that the nature of Baggett's present claims were apparent in the present record of discovery available to Baggett and his attorneys and that these claims, through the exercise of reasonable diligence could have been brought in a timely manner after his conviction on September 22, 2016. To that end, the Court finds credible William Stradley's testimony that Baggett had sought the assistance of counsel to prepare a writ within a couple of years after his conviction. (RR Writ Hearing vol. 2, p. 110)

_√_ ADOPTED. ___ REFUSED.

13. The Court finds that Baggett has failed in his burden to make a record sufficient to excuse the nearly eight-year delay between his conviction on September 22, 2016, and filing the present Application for Post-Conviction

Habeas Relief on July 1, 2024, and that his failure placed the State in a less favorable position, including prejudice to the State's ability to retry the defendant. Specifically, the Court finds that Baggett has clearly slept on his rights and that laches should apply.

_√_ ADOPTED. ___ REFUSED.

14. The Court finds credible the testimony of the trial prosecutor, Rebecca Lake, that, based on her experience with the present case and as a child prosecutor, it would be significantly more difficult to try the present case eight years later. (RR Writ Hearing vol. 2, pp. 59-60)

_√_ ADOPTED. ___ REFUSED.

CONCLUSIONS OF LAW

Prosecutorial Misconduct.

1. The Court concludes that Baggett has failed to show that the prosecutor engaged in misconduct or failed to comply with her duty to disclose to the defense criminal history and mental health evidence in her possession.

_√_ ADOPTED. ___ REFUSED.

Deficient Performance.

2. The Court concludes that Baggett failed to show that his trial attorneys rendered constitutionally

deficient performance by failing to investigate the criminal and mental health history of witness Jessica Gomez.

_√_ ADOPTED. ___ REFUSED.

Prejudice.

3. The Court concludes that any misconduct or deficiency resulting in the lack of knowledge on the part of the defense of the federal criminal conviction and mental health counseling of witness Jessica Gomez did not cause Baggett to plead no contest or otherwise prejudice his defense or render his plea involuntary.

_√_ ADOPTED. ___ REFUSED.

Laches.

4. The Court concludes that Baggett's present claim should be barred by the equitable doctrine of laches.

_√_ ADOPTED. ___ REFUSED.

RECOMMENDATION

Based on the above findings of fact and conclusions of law, the Court recommends that all relief requested in the present application for writ of habeas corpus be denied.

Appendix B

SIGNED AND ENTERED on this the 14 day of April, 2025.

/s/ [Illegible]
JUDGE PRESIDING