No. 25-5621

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Ja'Kroi Allen Banks — 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

Ja'Kroi Allen Banks
(Your Name)

Ramsey Unit, 1100 FM 655
(Address)

Rosharon, Texas 77583
(City, State, Zip Code)

(469) 472 - 6128
(Phone Number)

QUESTION(S) PRESENTED

Ja'Kroi Banks filed an 11.07 on August 28, 2019. Banks received an affidavit from Private Investigator James McKay in March of 2020. Banks used McKay's affidavit to rebut Attorney Hubert Todd McCray's affidavit filed June 30, 2020. The rebuttal nor McKay's affidavit was acknowledge in the findings of fact and conclusions of law of the trial court.

Is Banks entitled to pursue a subsequent writ with the newly discovered evidence found in the affidavit of McKay?

Ja'Kroi Banks, Attorney Cornelius Cox, and Private Investigator James McKay's affidavits are in contradiction of Attorney Hubert Todd McCray's affidavit, which the court exclusively used for its findings.

Does the trial court failure to grant an evidentiary hearing to ascertain the truth of the contradictions deny Banks of the enforcement of his 6th and 14th Amendments?

Many circuits have found the plea withdrawal hearing to be a critical stage in a criminal proceeding, however the Supreme Court, 5th Circuit, nor Texas Court of Criminal Appeals have not expressly ruled that the plea withdrawal hearing is a critical stage of the crim inal proceeding.

Is a plea withdrawal hearing a critical stage of the criminal proceeding?

After the ruling on Shinn, how does an indigent pro se defendant enforce his right of effective assistance of trial counsel, afforded by Gideon, when as the Supreme Court has acknowledged in Trevino, Texas has an inadequate system to protect a defendant's right to ineffective assistance of counsel?

The Supreme Court has acknowledged Texas inadequate system to protect an indigent pro se defendant's right to effective assistance of counsel in Trevino, is indigent pro se applicant entitled to counsel in the state collateral proceeding, being the first opportunity to raise an ineffective assistance of counsel claim, to properly litigate said claim?

If conviction has been obtained in violation of due process, by not providing effective assistance of counsel to assist in the critical stage of plea bargaining, and void for lack of jurisdiction, by the involuntary waiver of jury trial, in violation of due process, in regards to procedural defaults, what jurisdiction does the court have besides to rule the original judgment void?

How can the right to the effective assistance of counsel at trial be ensured if a state has no adequate vehicle for an indigent pro se defendant to assert that the right was violated?

Is a live evidentiary hearing necessary in post-conviction proceedings on claims of ineffective assistance of counsel during plea negotiations?

If the Sixth Amendment and procedural due process entitle criminal defendants to a remedy for a constitutional violation, do they also entitle indigent pro se defendants to provide evidence to prove there was a violation, and if not does it deprive the right?

LIST OF PARTIES

[X] 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

Banks v State, 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2017CR0571 - October 10, 2018

Banks v State, Court of Appeals of Texas, Fourth District San Antonio
No. 04-18-00908-CR - December 19, 2018
2018 Tex.App.LEXIS 10521

Ex Parte Banks, Texas Court of Criminal Appeals
Tr Ct No. 2017CR0571-W1 No. WR-91,607-02 - March 17, 2021

Banks v Lumpkin, United States District Court of the Western District of Texas, San Antonio Division
CIVIL No. SA-21-CA-0656-JKP - January 16, 2024
2024 US Dist LEXIS 8258

Banks v Lumpkin, United States Court of Appeals for the Fifth Circuit
No. 24-50092 - June 28, 2024
2024 US.App.LEXIS 20075

Ex Parte Banks, Texas Court of Criminal Appeals
Tr Ct No. 2017CR0571-W2 WR-91,607-03 - March 26, 2025

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TABLE OF AUTHORITIES CITED

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.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was March 26, 2025. A copy of that decision appears at Appendix _____.

[X] A timely petition for rehearing was thereafter denied on the following date: April 16, 2025, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI, clause 2

This Constitution, and the Laws of the United States... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence.

United States Constitution, Amendment XIV, Section 1

... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Texas Code of Criminal Procedure, article 1.051

...

(d) An elgible indigent defendant is entitled to have the trial court appoint an attorney to represent him in the following appellate and postconviction habeas corpus matters:

...

(3) a habeas corpus proceeding if the court concludes that the interests of justice require representation;

...

Texas Code of Criminal Procedure, article 11.07

...

Sec. 4

(a) if a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application;

...

...

(c) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

Texas Code of Criminal Procedure, article 15.17

18 USCS §3006A(a)(2)(B)

STATEMENT OF THE CASE

- June 4, 2018, Banks, plead guilty to Aggravated Kidnapping pursuant to a plea bargain agreement and applied for deferred adjudication.

- August 15, 2018, Motion to Withdraw Jury Waiver and Plea of Guilty (hereinafter MTWJWAPOG) was filed, contending "his plea of guilty and jury waiver was involuntary and unknowing and or was based on the ineffectiveness of counsel."

- August 27, 2018, a hearing was held on the motion, and Petitioner pleads with the Court, "The seriousness of this case, I need someone to actually -- actually look into the information of my case and look into the facts of my case." Hubert Todd McCray's, trial counsel, response was, "...there are things I can do to address the points that Mr. Banks has made, but I would have to divulge confidential information and communication... I would like to motion the court, right now, to withdraw from representing him to preserve his confidentiality."

- October 10, 2018, at Sentencing Hearing, Cornelius Cox, newly appointed counsel, went on "just for the record " "I would like to renew his motion -- There's a motion on file for a withdrawal of a plea. I was not the -- the attorney that referenced that -- that motion itself. But in terms of my conversations with my client -- And -- And I wasn't here when that motion was done -- it appears that he was not adequately advised as to the consequences of his plea.

I feel, at this point, that based on that, that his plea that he gave is not free and voluntary. And based on that background, I'm asking the court to reconsider because my client's position is that he feels, at this point, that he did not commit these offenses." The court denied the request and continued to sentence Banks to 30 years in Texas Department of Criminal Justice-Institutional Division and a $1500 fine.

- Despite the date of the "filed" stamp date, October 16, 2018, Banks filed a Pro Se Motion for New Trial which alleged. "McCray scared me into a plea; expressed that it's in the best interest of the state to give me deferred adjudication,

to give me a rope to hang myself, so they can give me a 99 year sentence; I continued to express my intent to go to trial, and had no intentions of making a plea or waiving any of my rights; the interaction between Attorney Todd McCray and I were always uncomfortable and unsettling; if I requested for a new attorney his reputation here in Bexar County with judges and attorneys, no one would believe me; before sentencing I submitted a motion to remove my plea, which was denied.

- November 8, 2018, Cornelius Cox filed a Motion for New Trial which states the Defendant asserts his plea was not free and voluntary, because he was not fully aware of the consequences of his plea; Defendant's Pro Se Motion for New Trial and his Sworn Declaration by Inmate is incorporated in and attached to this Motion.

- According to the record on November 28, 2018, Cornelius Cox filed a Notice of Appeal.

- December 11, 2018, Dean Diachin filed Appellant's Response to This Court's Order Proposing to Dismiss for Want of Right of Appeal, where instead of arguing against the dismissal conceded to dismiss the appeal. Diachin also suggest to find relief by filing "an application for a writ of habeas corpus," and even emphasizes "In Texas, such writs are better vehicle for raising claims of ineffective assistance of trial counsel anyway."

- December 19, 2018, The Fourth Court of Appeals dismissed Petitioner's direct appeal, for want of jurisdiction.

- August 28, 2019, Petitionerfiled an 11.07 with the following grounds and asking the following questions:

Ground 1: Applicant denied effective assistance of counsel, by counsel's failure to provide adequate legal assistance during plea negotiations.

1. Does the search into Banks private home surveillance video violate Banks' reasonable expectation of privacy?
2. Did trial counsel make a reasonable decision to not have Banks' sanity investigated?
3. Did trial counsel deprive Defendant of a fair trial, by advising Banks to plea guilty without first being evaluated by appointed psychologist?

4. Does trial counsel's erroneous advise about receiving deferred adjudication-community supervision, make Banks' plea of guilty involuntary?
5. Did Hubert Todd McCray care if the trial was fair?

Ground 2: Denied effective assistance of counsel, not presenting any mitigating evidence during sentencing.

Ground 3: Illegally restrained, by being denied Fourth Amendment right against illegal search and seizure.

1. Is it legal to convict a citizen of the United States of America, with illegally obtained evidence?
2. How did the San Antonio Police Department's Tech Unit create a copy of Ja'Kroi Banks' private home surveillance DVR system?
3. Was this copy altered in any way?
4. How did Detective R. Garcia #2598 "view some of the surveillance footage"?

Ground 4: Ja'Kroi Banks and Hubert Todd McCray's irreconcillable conflict led to a constructive denial of counsel. (Conflict of Interest)

Ground 5: Denied due process by court's abuse of discretion and failure to substantially comply with Texas Criminal Code of Procedure article 26.13.

Ground 6: Denied due process, denied appeal, with defective Trial Court's Certification of Defendant's Right of Appeal.

Ground 7: Ja'Kroi Banks is actually innocent of Aggravated Kidnapping.

- October 3, 2019, the District Court designated 3 issues of "previously unresolved facts" which are material to the legality of Applicant's confinement exist".

Involuntary Plea
Ineffective Assistance of Counsel
Rights violated

- In March of 2020 Banks received a letter and an affidavit from Private Investigator James McKay. This affidavit contained evidence of ineffective assistance of counsel, conflict of interest, and involuntary and unknowing plea.

- Please visit GROUND ONE of 2254 for all Petitioner's actions taken to litigate, in the 11.07 proceeding. The argument of GROUND ONE states, "Petitioner in his

11.07 application and memorandum of law, point's to Clerk's and Reporter's Record and utilizes exhibits as evidence of proof of specific facts of his allegations and grounds, with supporting case law..."

- It is important to note that during the 2254 proceeding after requesting and receiving the state record, Banks revealed that after the District Clerk Certified "that the above and foregoing are true and correct copies of all the proceedings..." The Court of Criminal Appeals had to order the District Clerk to forward to the Court "Applicant's exhibits "A" through "F", on September 16, 2020.

- March 17, 2021, the Texas Court of Criminal Appeals denied the application, without written order on the findings of the trial court without a hearing on the court's independent review of the record.

- On June 17, 2021, Banks filed a 2254 with the following grounds and asking the following questions:

GROUND 1: Circumstances exist that render the Texas Habeas Corpus process ineffective to protect the rights of the Petitioner.

1. Habeas Corpus is a Constitutional guaranteed liberty for American Citizens to contest their illegal conviction/restraint, has the trial court violated Petitioner's due process/due course of law guarantee, by disregarding the established rules of Texas Code of Criminal Procedure article 11.07 and Texas Rule of Appellate Procedure 73, and in doing so depriving Petitioner of the Life and Liberty he seeks via Habeas Corpus, abusing its discretion and power in order to continue the cover up of the unconstitutional conviction?
2. What legal authority did trial court have to extend the time limitations of TRAP 73.5 and grant more time for affidavits?

GROUND 2: The State Court's adjudication resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

GROUND 3: Petitioner's guilty plea was unknowing and involuntary.

1. ...if these three legal professionals were not capable of identifying the charge, how could the layman, unlearned in law, Petitioner?
2. How do I prove coercion? Was I supposed to admit that the person standing next to me, in arms length, representing me as my attorney threatened me?

3. Does the court expect a career attorney to admit to wrong doing done outside of the record if they feel there is no way of being found out?

4. So does McCray telling Petitioner if he takes his case to trial, he would be given a 99 year sentence, a threat to withhold his expertise of being a 20 plus year Board Certified in Criminal Law Career, 99 years being the max sentence, would mean that he did nothing, wouldn't it?

5. ...So why would Petitioner in arms length of the person that made this threat accuse him of such a threat?

GROUND 4: Petitioner's guilty plea unknowing and involuntary due to ineffective assistance of counsel.

1. So even if McCray made Petitioner aware that the State opposed deferred adjudication, which he did not, how is it competent advice to advise, to apply for deferred adjudication, but also apply for deferred adjudication?

2. ...how did McCray assist the Petitioner in making the decision to plead guilty or insist on going to trial, without an independent investigation of the facts, mental evaluation of Petitioner's sanity at the time of the alleged crime, informing the Petitioner of all the terms of the plea bargain agreement, knowing what his client is charged with, or knowing the law of the charge?

GROUND 5: Denied effective assistance of counsel, due to counsel's failure to litigate a Fourth Amendment claim.

GROUND 6: Denied effective assistance of counsel, due to conflict of interest.

GROUND 7: Petitioner contends that there was insufficient evidence for his conviction for Aggravated Kidnapping.

1. ...how does the use of deadly force constitute kidnapping, yet the infliction of bodily injury is aggravated kidnapping?

GROUND 8: Denied effective assistance of counsel, not presenting any mitigating evidence during sentencing.

1. Was Cornelius Cox performance at Sentencing Hearing hindered by the denial for more time to investigate?

GROUND9: Denied due process, denied jury trial, by Court's abuse of discretion and failure to substantially comply with Texas Criminal Code of Procedure article 26.13

GROUND 10: Denied due process, denied appeal, with unknowing and involuntary waiver of appeal and ineffective assistance of counsel.

- Petitioner filed a subsequent ground to add a Rothgery claim.
- On January 16, 2024, the federal district court denied Petitioner relief on his Petition for Habeas Corpus.
- January 26, 2024, Petitioner filed a notice of appeal in the 5th Circuit.
- February 8, 2024, Petitioner filed a notice of appeal in the district court and also motioned the district court to alter or amend judgment and findings, pursuant to Rule 52(b) and 59(e).
- June 28, 2024, the Fifth Circuit ruled, "Banks has failed to make the reuisite showing. Accordingly, his COA motion is DENIED. Because Banks fails to make the required showing for a COA, we do not reach his contentions regarding an evidentiary hearing."
- February 4, 2025, Petitioner filed a subsequent 11.07 with the following grounds and asking the following questions:

Ground 1: This is a subsequent application on factual basis unavailable when original application was filed.

Ground 2: Defendant's plea involuntary, by denial of effective assistance of counsel.

1. Does trial counsel's, Hubert Todd McCray, failure to investigate the facts of the case, prepare for trial, and develop a defense strategy, constitute ineffective assistance of counsel, denying Applicant actual and competent advice to make an informed and conscious choice to waive his rights against self incrimination, to confront his accusers, and to trial by jury and enter a guilty plea?

Ground 3: Conflict of Interest during Motion to Withdraw Jury Waiver and Plea of Guilty Hearing

1. Does McCray's testimony or lack of testimony, at the hearing on the motion, establish a conflict of interest, denying Banks counsel at a critical stage?

Ground 4: Ineffective Assistance of Counsel led to the loss of an Appeal.

1. Does the false testimony of Hubert McCray, stating to the Court that no written motions ruled on before trial, constitutute ineffective assistance of counsel and cause Ja'Kroi Banks to lose his right to appeal?

2. By Dean Diachin not raising claims of rulings on written pretrial motions, which are allowed by plea bargainers, was Ja'Kroi Banks prejudiced, by losing his right to appeal?

- March 26, 2025, the Texas Court of Criminal Appeals "dismissed without written order this subsequent application for a writ of habeas corpus. TEX.COD CRIM.PROC Art. 11.07, Sec. 4(a)-(c)"
- April 16, 2025, the Texas Court of Criminal Appeals "to advise that the applicant's suggestion for reconsideration has been denied without written order."

REASONS FOR GRANTING THE PETITION

Effective counsel, being my only protection against the state, and only advisor in deciding to preserve or waive the rights in place to protect me, if that counsel is not playing the role of advocate, in plea bargaining would render any agreement agreed on invalid and void, including any attached authority or jurisdiction that may have stemmed from the plea. The evidence that Hubert Todd McCray (hereinafter McCray) not only did not conduct any investigation and was not acting as an advocate, but took Banks' autonomous right to not plea guilty, when Banks told McCray he was innocent and wanted to proceed to trial, but instead chose to "convince" Banks to accept a plea bargain agreement, has been presented to the trial court, Texas Court of Criminal Appeals (hereinafter CCA), and the federal court, yet all refuse to find that McCray was ineffective, causing Banks' plea to be involuntary and unknowingly made, and in turn unlawfully restrained by a void conviction. This injustice is possible due to the inadequate systemic procedures which denies indigent defendants the ability to properly hold their appointed counsel to the constitutional mandate of being effective, more especially under the cover of the many waivers that proceed the acceptance of a guilty plea, and in violation of due process. State post-conviction review affords inmates a forum for litigating claims requiring factual developments, such as claims regarding the failure of trial counsel to undertake an adequate investigation. However, Texas does not provide counsel, nor grant evidentiary hearings to indigent inmates seeking to challenge their convictions and are filed pro se without the benefit of an investigation of any kind. The framers of our Constitution did not envision the plea bargain system, yet they have become the essence of our criminal justice system. This does not negate the fundamental rights bestowed on any and every criminal defendant, and the right to a remedy when those rights have been violated.

Ja'Kroi Banks (hereinafter, Banks) filed an original application for writ of habeas corpus pursuant to Code of Criminal Procedure article 11.07, on August 28, 2019. James McKay (hereinafter McKay), licensed private investigator, spoke with McCray on September 13, 2019 about Banks and Cause 2017-CR-0571, and had a sworn affidavit notarized on January 30, 2020, about the conversation with McCray. Banks received this sworn affidavit in March 2020. Banks filed a subsequent application for writ of habeas corpus pursuant to Texas CCP art. 11.07 sec. 4, on factual basis unavailable when original application was filed, and a request for an out-of-time appeal.

Banks' factual basis is based on the affidavit received from McKay, with evidence of ineffective assistance of counsel and conflict of interest, by trial counsel, McCray. Texas CCA found that, "The date after which a claim must have become newly available is not the date final disposition of the earlier application. Under Section 4(a)(1), instead, 'the factual or legal basis for the claim' must have been 'unavailable' as of 'the date the applicant filed the previous application.' TexCodeCrimProc art. 11.07 §4(a)(1). Thus, so long as applicant can demonstrate that his subsequent writ claims were factually or legally unavailable to him at the time that he filed his original writ application, it does not matter under the statute whether he could have raised those claims in an amendment to that initial writ application before it was finally disposed of." see Ex Parte Guzman, 678 SW3d 14 (TexCrimApp 2023). Banks is entitled to the effective assistance of counsel on his direct appeal as of right pursuant to the 6th and 14th Amendments of the US Constitution. Evitts v Lacey, 469 US 387. Banks showing two attorneys were ineffective and their ineffectiveness deprived him of an appeal, he is entitled to an out-of-time appeal. see Roe v Flores-Ortega, 120 SCt 1029 (2000) (When counsel's constitutionally deficient performance deprives defendant of appeal that he otherwise would have taken, defendant has made out successful ineffective assistance of counsel claim entitling him to an appeal.) see also Garza v Idaho, 586 US 232 (2019) (the pre-

sumption of prejudice recognized in Flores-Ortega applies regardless of whatever the defendant has signed an appeal waiver.)

Right to Effective Counsel

Plea Bargains

Laflar stated that "defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process," and that "during plea negotiations defendants are entitled to the effective assistance of counsel." see Laflar v Cooper, 132 SCt 1376, 1384 (2012) (quoting McMann v Richardson, 397 US 759, 771 (1970)) Similarly, Frye noted that Padilla "made clear that "the negotiations of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." Missouri v Frye, 132 SCt 1399, 1406 (2012) (citing Padilla v Kentucky, 130 SCt 1473, 1486 (2010) If the Court meant to limit the right to effective assistance to informing and counseling defendants about formal plea offers the prosecution has extended, it would not have repeatedly used the words "plea bargaining," "plea negotiations," and "negotiation of a plea bargain."

The Gibson decision recognized how "even the intelligent and educated layman has small and sometimes no skill in the science of law," and thus "requires the guiding hand of counsel at every step in the proceeding against him." Gideon v Wainwright, 372 US 335, 345 (1963) (quoting Powell v Alabama, 287 US 45, 68 (1932) It is difficult to conceive a meaningful right to counsel if counsel if counsel is not required to function effectively in a plea bargaining system.

Frye and Padilla made clear that "negotiation of a plea bargain is a critical phase of litigation for purpose of the Sixth Amendment right to effective assistance of counsel," and are a testament to the Court's recognition that "plea bargaining is... not some adjunct to the criminal justice system," and to the reality that 95% of all convictions follow guilty pleas and not trials. Frye made the uncontroversial but important statement that "in today's criminal justice system... the negotiation of a plea bargain, rather than the unfolding of a trial, is almost

always the critical point for a defendant." The result of this reality is that defense counsel have responsibilities in the plea bargain process... that must be to render the adequate assistance of counsel that the Sixth Amendment requires." Frye, 132 SCt @1407 Failure to investigate prior to bargaining and failure to gain knowledge of likely trial outcomes, violates counsel's constitutional and ethical duty to investigate.

Because "bargaining" happens off the record between prosecution and defense and normally outside the defendant's presence, it is difficult to adequately examine any later claim of ineffectiveness in that process. A live evidentiary hearing is necessary in post-conviction proceedings on claims of ineffective assistance of counsel during plea negotiations. Indigent inmates face significant hurdles in overcoming the presumption that counsel acted strategically, and in proving prejudice, which requires demonstrating a reasonable likelihood that, absent deficient bargaining, the outcome of the proceeding would have been different, which is an extremely difficult task.

Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. Missouri v Frye, 566 US 134, 144 (2012); see also Padilla v Kentucky, 559 US 356, 364 (2010); Hill v Lockhart, 474 US 52, 57 (1985). During plea negotiations defendants are entitled to the effective assistance of competent counsel." McMann v Richardson, 397 US 759, 771 (1970) The Sixth Amendment requires effective assistance of counsel at critical stages of a criminal proceeding. Its protections are not designed simply to protect the trial, even though "counsel's absence [in these stages] may derogate from the accused's right to a fair trial. United v Wade, 388 US 218, 226 (1967) The constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice.

Other Critical Stages

In Rothgery v Gillespie County (554 US 191) The Court held that, "the right to counsel

guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed on his liberty." Not only did I not have counsel at the initial appearance before a judicial officer, but was not appointed counsel until five days after indictment. In a previous arrest when I had counsel for the first appearance, counsel was able to point out illegal search, and the case was dismissed and didn't move forward. see US v Cronic, 466 US 648, 658 (1984) (the right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. Absent some effect it has on the ability of the accused to receive a fair trial. Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated.)

Plea Withdrawal Hearing

Many circuits have found the plea withdrawal hearing to be a "critical stage" in a criminal proceeding. see US v Presly, 415 Fed.Appx. 563 (5th Cir 2011) (Without explicitly holding so, we assume arguendo that Presly was entitled to counsel at the hearing on his motion to withdraw his guilty plea. Our assumption is informed by a survey of our sister circuits. see Forbes v US, 574 F.3d 101 (2d Cir 2009) (A motion to withdraw a guilty plea is a critical stage of a criminal proceeding); US v Segarva-Rivera, 473 F.3d 381, 384 (1st Cir 2007) (The entry of a guilty plea is such critical stage, and a plea-withdrawal hearing is another) US v Garrett, 90 F.3d 210, 212 (7th Cir 1996) (And defendant is entitled to counsel during all critical stages of the criminal proceedings, including a hearing on defendant's motion to withdraw a guilty plea); US v Crowley, 529 F.2d 1066, 1069 (3rd Cir 1976) (At least absent unusual circumstances, a hearing on a motion to withdraw a guilty plea is sufficiently important in a federal criminal prosecution that the Sixth Amendment requires the presence of counsel); US v Joslin, 434 F.2d 526, 529-30 (DC Cir 1970) (Since the proceeding... was integral part of the criminal prosecution, appellant was of course, entitled to counsel on his request

to alter his guilty plea);

Banks at the hearing for his MIWJWAPOG, contending "his plea of guilty and jury waiver was involuntary and unknowing and or was based on the ineffectiveness of counsel," was left to plead, "the seriousness of this case, I need someone to actually, actually look into the information of my case," alluding to the lack of investigation by McCray. If no actual assistance for the accused's defense is provided, the constitutional guarantees have been violated. The adversarial process protected by US Const amend VI requires that the accused have counsel acting in the role of an advocate. see US v Cronic, 466 US 648 (1984)

Conflict of Interest

In Cuyler v Sullivan (466 US 335), the Supreme Court ruled that a defendant can demonstrate a Sixth Amendment violation by showing that (1) counsel was actively representing conflicting interest and (2) the conflict had an adverse affect on specific aspects of counsel's performance. Attorney McCray filed MIWJWAPOG, which states in part, "Defendant contends that his plea of guilty and jury waiver was involuntary and unknowing and or was based on the ineffectiveness of counsel." At the hearing on the motion Banks pleads with the court that, "The seriousness of this case, I need someone to actually, actually look into the information of my case." McCray's response was, "Judge, at this point, there are things I can do to address the points that Mr. Banks has made, but I would have to divulge confidential information and communication, which I'm prevented from doing by the state rules of professional conduct. Therefore, in order to preserve his confidentiality..." McCray was not able to pursue his client's best interest free from the influence of his concern of being found ineffective. If the allegations in Banks' testimony were true, McCray's action or inaction would be ineffective assistance of counsel. McKay's affidavit shows there was no investigation. Any contention by counsel that defendant's allegations were not true would contradict his client, which McCray admit to McKay, "his client was trying to throw him under

the bus." Banks was effectively without counsel at the hearing and was faced to present his motion without the assistance of counsel. Banks' testimony was unclear and befuddled. Banks not only was without conflict free representation, but also was in effect without assistance of counsel at all, a situation that clearly calls for the application of Cuyler's presumption of prejudice.

"The constitutional rights of criminal defendants," the Court observed, "are granted to the innocent and guilty alike. Consequently, we decline to hold either that the guarantee of effective assistance of counsel belongs solely to the innocent or that it attaches only to matters affecting the determinations of actual guilt." see Laflar v Cooper, 566 US 156, 169; Kimmelman v Morrison, 477 US 365, 380 The Sixth Amendment guarantees a defendant the right to counsel. The right includes the right to an attorney who is not "burdened by an actual conflict of interest. see Strickland v Washington, 466 US 668, 692 (1984)

Voluntariness of Plea

Where a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases." see McMann v Richardson, 397 US 759, 771 (1970); Hill v Lockhart, 106 SCt 366, 369 The Supreme Court explained in Tollet v Henderson, 411 US 258 (1973), a defendant who pleads guilty upon the advice of counsel "may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in McMann." id @267

Inadequate Fact Finding Process

Factual disputes in most legal systems are usually resolved in an adversarial hearing, during which live witnesses testify and both sides test the accuracy of the witness' testimony through cross examination. However, instead of resorting to the traditional method of resolving factual disputes by conducting an evidentiary hearing, most trial judges in Texas utilize a practice known as a "paper hearing".

Rather than requiring each party to bring its witnesses to court and subjecting these witnesses to cross examination, the trial judge allows each party to file paper such as documents, affidavits, and expert reports. For instance, in Perillo v Johnson, 205 F.3d 775 (5th Cir 2000) a condemned woman alleged that her trial counsel provided ineffective assistance of counsel after learning that her counsel represented another participant in the crime who testified against her. The Texas courts upheld her conviction and death sentence based only on affidavits. A federal court granted the relief after it conducted an evidentiary hearing and made credibility findings.

The 'paper hearings" are flawed not only because of the absence of cross-examination, but because they allow the prosecutor to make assertions, and the inmate's petition is filed in the same court in which he was convicted, thereby placing him in the position of requestiing that the same judge who presided over his conviction find that the conviction was unconstitutionally obtained. State post-conviction review affords inmates a forum for litigating claims requiring factual development, such as claims regarding the failure of trial counsel to undertake adequate investigation. However, Texas does not provide counsel to indigent inmates seeking to challenge their convictions and are filed pro se without the benefit of an investigation of any kind. In Texas, state post-conviction proceedings are simply a sham, with state trial judges refusing to engage in any meaningful fact-finding.

A practice particularly problematic is the reluctance of state trial courts to conduct evidentiary hearings to resolve contested, factual issues. When conflicting affidavits are presented, an evidentiary hearing in state post-conviction proceedings is usually essential to resolve the conflicting accounts about trial counsel's decision-making. An affidavit indicating that trial counsel forwent certain investigation as a matter of "trial strategy" should be subject to cross-examination, and live testimony will afford the trial court a preferred position to make judgments about demeanor and truthfulness. Yet in many courts, starkly

different factual accounts about trial counsel's decision-making are resolved in a process of "paper hearings". Evidentiary hearings are indispensable tools of post-conviction fact development, however Texas courts have entered findings of fact and conclusions of law without the benefit of live hearings. The central purpose of state post-conviction is to uncover and examine facts outside of the trial record.

Texas trial judges are fundamentally responsible for making factual findings and adjudicating claims in habeas corpus cases, but asking trial judges to pass on the fairness and accuracy of trials over which they presided creates a problem of dissonance. To give decision-making authority to a trial judge familiar with the underlying pre-trial proceeding and trial, would make them hesitant to find reversible error necessitating a new trial, because of errors that could have been avoided with better oversight. A decision to grant relief is an acknowledgement that the judge somehow "allowed" the original to be defective.

The Supreme Court has suggested that a state court determination is unreasonable not merely when it is wrong or lacks support, but also when an inmate makes a significant factual showing and the procedure used by the state to arrive at its resolution is deeply flawed. see Brumfield v Cain, 135 SCt 2269, 2282-82 (2015) Banks Ground One in his 2254 shows "circumstances exist that renders the Texas Habeas Corpus process ineffective to protect the rights of the Petitioner," and the trial court relied exclusively on McCray's affidavit, which were in contradiction to Banks', Cornelius Cox' (hereinafter Cox), and McKay's affidavits, or any indication that it engaged Banks' evidence and arguments; unreasonably refused to permit necessary fact development; and failed to acknowledge or rule on any motions filed by Banks. Banks also shows in Ground Two of his 2254, the state court's adjudication resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

The Texas Court of Criminal Appeals is supposed to review the case de novo

and either adopt, reject, or modify the actions of the court. As detailed in several opinions by former CCA Judge Elsa Alcala, inmates are left without adequate guidance at their writs earliest stages, which are critical in the habeas process. The dissenting opinion of Justice Alcala in In re Garcia (486 SW3d 565) gives insight on the proceedings behind the veil.

"In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence."

This text in the Sixth Amendment of the United States Constitution ensures to all criminal defendants the right to the effective assistance of counsel at trial. See US CONST. amends. VI, XIV. The Sixth Amendment "stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not "still be done". Gideon v Wainwright, 372 US 335, 343, 83 SCt 792 (1963). But (quoting Johnson v Zerbst, 345 US 458, 462, 58 SCt 1019 (1938). But how can the right to the effective assistance of counsel at trial be ensured if a state has no adequate vehicle for a defendant to assert that the right was violated? As the Supreme Court has suggested [in Trevino], Texas's system for addressing claims of ineffective assistance of counsel at trial counsel has serious flaws. See Trevino v Thaler, 569 US 413, 133 SCt 1911, 1919 (2013). Under the current scheme, in many cases, neither direct appeal nor a writ of habeas corpus provides a meaningful opportunity for litigants to present ineffectiveness claims. On direct appeal, which is a point in time at which an indigent appellant has the right to appointed counsel, an ineffectiveness claim usually fails due to the need for evidence outside the record, which usually cannot be presented during the narrow window of time permitted for filing a motion for new trial. Similarly, on habeas review, which is a point in time at which an indigent applicant has no right to appointed counsel, an ineffectiveness claim will almost always fail because the pro se applicant is unaware of the legal standard and evidentiary requirements necessary to establish his claim. Because neither direct appeal nor habeas review currently provides an adequate vehicle for raising an ineffectiveness challenge, Texas's scheme fails to ensure that the "bedrock principle" of effective assistance of counsel is fulfilled for all criminal defendants. See Martinez v Ryan, 566 US 1, 132 SCt 1309, 1317 (2012)

1. Texas Systemic Failure to Provide An Adequate Vehicle for Raising Ineffective-Assistance-of-Counsel Claims.

The Texas criminal justice system fails to provide an adequate vehicle by which an indigent defendant can raise a claim challenging the effectiveness of his trial attorney. Given that a habeas proceeding is generally recognized as the preferred vehicle for raising ineffectiveness claims in Texas. see Andrews v State, 159 SW3d 98, 102 (TexCrimApp 2005) and given that indigent defendants

are not afforded the assistance of appointed counsel at that procedural juncture, it is apparent that most indigent pro se habeas litigants will be unable to properly litigate their ineffectiveness-assistance claims, based on their lack of the legal expertise necessary to properly raise such claims. To explain this problem in more detail, (A) I review the applicable legal standard for ineffective-assistance-of-counsel claims to show that it is a high bar that cannot likely be met by most pro se litigants, even those with likely meritorious claims, and (B) I show that, without the assistance of counsel on habeas for raising ineffectiveness claims, such claims will largely go unaddressed, thereby leaving unprotected the fundamental Sixth Amendment right to the effective assistance of trial counsel.

A. The Standard for Ineffective-Assistance-of-Counsel Claims is Demanding

The relevant legal standard for establishing a claim of ineffective assistance of trial counsel is rigorous, and it is in no way conducive to pro se litigation. To prevail on a claim of ineffectiveness, an applicant must meet the two-prong test set out in Strickland v Washington, 466 US 668, 104 SCt 2052 (1984)

First, an applicant must demonstrate deficit performance by showing that his attorney's representation fell below an objective standard of reasonableness, as judged by prevailing professional norms. In order to do so, an applicant must overcome the strong presumption that counsel's conduct was reasonable. See Bart v Titlow, 571 US 12, 134 SCt 10, 17 (2013) (We have said that counsel should be "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable judgment,' and that the burden to 'show that counsel's performance was deficient' rests squarely on the defendant.") (quoting Strickland, 466 US @687, 690); Ex Parte Overton, 444 SW3d 632, 640 (TexCrimApp 2014) (There is a strong presumption that counsel's conduct was reasonable and judicial scrutiny of it will be highly deferential.") A claimant must generally prove deficiency using affirmative evidence in the record sufficient to overcome the presumption that the challenged action was sound trial strategy. Ex Parte Bryant, 448 SW3d 29, 39 (TexCrimApp 2014)

Second, an applicant must demonstrate prejudice by establishing that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland, 466 US @694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the proceeding. id.; see also id @686 (explaining that "the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.")

As the Supreme Court has recognized, "surmounting Strickland's high bar is never an easy task." Padilla v Kentucky, 559 US 356, 371, 130 SCt 1473 (2010). In light of the demanding requirements for satisfying the Strickland standard, it is difficult to imagine that most pro se litigants untrained in the law could prevail in meeting this high standard.

B. The Issue is Effective Assistance of Counsel at Trial

To pursue ineffective-assistance-of-counsel claims against counsel at trial, in accordance with the established legal principle that a defendant has a constitutional right to the effective assistance of counsel at that stage of his criminal proceedings. This principle is rooted in the constitutional right to the effective assistance of counsel at trial.

1. There is Currently No General Constitutional Right to Habeas Counsel

It is tempting to disregard the absence of counsel at the state habeas juncture with the simple proposition that there is no general constitutional right to the assistance of counsel on collateral review of a criminal conviction. See Pennsylvania v Finley, 481 US 551, 554-55, 107 SCt 1990 (1987) (explaining that the Supreme Court has "never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions," and concluding that a state habeas petitioner has "no such right [to appointed counsel] when attacking a conviction that has long since become final upon exhaustion of the appellate process.") The Supreme Court has already determined in Finley that a habeas applicant does not have a general constitutional right to appointed counsel in a post-conviction proceeding, however when a habeas applicant has complained of ineffective assistance of trial counsel, and when it appears to a habeas court that a colorable claim exists, based either on the substance of the pro se pleadings or in light of the record, shouldn't the habeas court appoint counsel for such an applicant to pursue that claim in order to ensure that he has been afforded his constitutional right to the effective assistance of counsel?

2. There is a Right to Effective Counsel at Trial

The issue at stake here is the right to the effective assistance of counsel at trial and the need for Texas to provide a meaningful avenue for litigants to vindicate that constitutional right. See Gideon, 372 US @344. The question, therefore, is whether Texas currently has an adequate procedural scheme by which an indigent defendant may raise a challenge to the effectiveness of counsel. More importantly, the Supreme Court has determined (a) that Texas's current scheme constitutes an inadequate vehicle by which an indigent defendant may raise an ineffective-assistance claim and, therefore, presents an unacceptable risk that meritorious claims will go unremedied, and (b) that the problem is significant enough that is was necessary to alter the federal approach to resolving these claims left unaddressed due to the inadequacies of Texas's system. After examining in the approach for resolving this type of problem in federal and other state courts.

a. Texas's Scheme is Inadequate to Protect Defendant's Sixth Amendment Rights

The Supreme Court has addressed the inadequacies in Texas's system for litigating claims of ineffectiveness of trial counsel. See Trevino v Thaler, 569 US 413, 133 SCt 1911 (2013) With respect to the inadequacy of a direct appeal for raising such a claim, the Supreme Court observed in Trevino

that the "structure and design of the Texas system in actual operation" make it "virtually impossible for an ineffective assistance claim to be presented on direct review." Id @1915 (quoting Robinson v State, 16 SW3d 808, 810 (TexCrimApp 2000). It explained that the reason that a direct appeal is generally inadequate is because "the inherent nature of most ineffective assistance' of trial counsel 'claim' means that the trial court record will often fail to 'contain the information necessary to substantiate' the claim." id @1918 (quoting Ex Parte Torres, 943 SW2d 469, 475 (1997). Additionally, it observed that, although a motion for a new trial may in some cases provide a means to develop the record on appeal, that vehicle "is often inadequate because of time constraints and because the trial record has generally not been transcribed at this point." Id (quoting Torres, 943 SW3d @475). In light of the need for evidence outside the trial record and the relevant time constraints, the Supreme Court determined that "the Texas procedural system - as a matter of its structure, design, and operation - does not offer most defendants a meaningful opportunity to present a claim of ineffective assistance of trial counsel on direct appeal." Id @1921. Thus, although Texas law "appears at first glance to permit...the defendant initially to raise a claim of ineffective assistance of trial counsel on direct appeal, "the system, in actual operation, makes it "virtually impossible" to adequately present that type of claim at that procedural juncture. See id @1915.

The Supreme Court has also suggested that a Texas post-conviction writ application, if undertaken without the effective assistance of counsel, is an inadequate vehicle for litigating ineffective-assistance claims. See id @1919-20, see also Martinez v Ryan, 566 US 1, 132 SCt 1309 (2012). In Trevino, the Court indicated that the lack of representation, or ineffective representation, in a Texas post-conviction proceeding could "deprive a defendant of any review of [an ineffective-assistance-of-trial-counsel] claim at all" Trevino, 133 SCt @1918. The Court stated, "As the Court of Criminal Appeals has concluded, in Texas 'a writ of habeas corpus' issued in state collateral proceedings ordinarily 'is essential to gathering the facts necessary to...evaluate...[ineffective-assistance-of-trial-counsel] claims," and, therefore, "collateral review normally constitutes the preferred - and indeed as a practical matter, the only - method for raising an ineffective-assistance-of-trial-counsel claim." Id @1918, 1920 (quoting Torres, 943 SW2d @475)

Although Texas has provided a vehicle - an application for writ of habeas corpus under Article 11.07 of the Code of Criminal Procedure - for presenting complaints about the effectiveness of trial counsel, the problem is that indigent defendants have no right to counsel at that juncture. Moreover, ineffectiveness claims require factual and legal development in order to meet Strickland rigid standard of proof. The Supreme Court discussed this problem in Martinez, in which it stated,

> without the help of an adequate attorney, a prisoner will have difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim [on habeas review]. Claims of ineffective assistance at trial often require investigate work and an understanding of trial strategy, when the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding

cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing the claim. To present a claim of ineffective assistance at trial in accordance with the state's procedures, then, a prisoner likely needs an effective attorney.

Martinez, 132 SCt @1317. The Court further reasoned that prisoners are generally "unlearned in the law" and "may not comply with the state's procedural rules or may misapprehend the substantive details of federal constitutional law." Id. And it observed that, "while confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the record." Id. Thus, the court concluded that, when a state's system for litigating ineffectiveness claims has the effect of "moving trial ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the state significantly diminishes prisoner's ability to file such claims." id. @1315

The problem can be quickly summarized like this. "Texas courts in effect have directed defendants to raise claims of ineffective assistance of trial counsel on collateral, rather than direct review," which is a point of the proceedings at which defendants have no right to counsel. Trevino, 133 SCt @1919. Because "the Texas procedural system would create significant unfairness" in light of its failure to allow litigants to adequately pursue their complaints in state court, the Supreme Court changed its approach so that federal courts would be permitted to address state ineffective-assistance-of-counsel claims as if those claims were presented for first time in federal habeas proceedings. Id.

b. The Federal Approach Has Changed Due to Texas's Deficiencies

Texas's problem in failing to provide an adequate mechanism for indigent defendants to complain about the ineffectiveness of trial counsel was significant enough that the Supreme Court decided to craft an equitable remedy in federal court to address this situation. This is important because, even though the Supreme Court identified this problem as being so significant as to require a federal equitable remedy the Texas Court of Criminal Appeals has yet declined to even consider whether any problem exists. Furthermore, as a result of the Texas Court of Criminal Appeals inaction in this area [for a time], federal courts [had] resolved state ineffectiveness claims in the first instance without any deferance to state - court decisions about state - court cases. Thus, in many cases, state appellate courts have become inconsequential to ineffective-assistance-of-counsel claims... therefore, [applicant's] will likely be able to obtain merits review of his substantial ineffective-assistance claim in the first instance in federal court because [the Court of Criminal Appeals] has refused to ensure that he is appointed counsel for purposes of asserting his claim in state court. The Texas Court of Criminal Appeal's inaction thus makes thee Court irrelevant for purposes of this type of litigation.

Given its recognition that an initial state habeas proceeding undertaken without the effective

assistance of counsel would effectively deprive Texas defendants of any meaningful review of their ineffective-assistance claims, the Supreme Court crafted a federal equitable remedy that would permit such claims to be raised and adjudicated for the first time on federal habeas review. See id @1921. The Supreme Court held that, where a state procedural framework makes it highly unlikely that a defendant will have a meaningful opportunity to raise an ineffective-assistance claim on direct appeal, a procedural default "will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." id (quoting Martinez, 132 SCt @1320) The Court reasoned that such an equitable remedy was necessary in order to protect the "critically important" right to the "adequate assistance of counsel at trial," given that claims pertaining to that right would involve the "need for a new lawyer, the need to expand the trial court record, and the need for sufficient time to develop the claim." id.

In reaching its conclusion in Trevino, the Supreme Court relied upon the reasoning in its former opinion in Martinez, in which it had similarly held that Arizona's scheme for litigating ineffective-assistance-of-trial-counsel claims, which required that such claims be raised on collateral review, was inadequate to ensure that valid Sixth Amendment claims were afforded meaningful consideration. Martinez, 132 SCt @1315, 1319. In Martinez, the Court observed that, although federal habeas courts are generally barred from considering any claims that has not first been properly presented and adjudicated in state court, an exception to that general rule was required under these circumstances in order to "protect prisoners with a potentially legitimate claim of ineffective assistance of trial counsel." id @1315

It was within the context of this recognition - that a convicted person cannot reasonably be expected to raise a viable pro se challenge to the effectiveness of his trial attorney without the assistance of counsel - that the Supreme Court crafted the equitable remedy in Martinez and Trevino that would permit such litigants to raise their substantial claims for the first time in a federal habeas proceeding. see id. The Supreme Court held that the creation of an equitable exception to its normal procedural - default rules was appropriate in light of fact that "the initial collateral review proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim." id; Trevino, 133 SCt @1919. Given that the right issue - the right to the effective assistance of counsel at trial - is a "bedrock principle in our justice system," the Court reasoned that such an equitable exception was necessary to ensure that substantial ineffective-assistance claims were given meaningful consideration. Martinez, 132 SCt @1317

It is true that the holding of Martinez and Trevino do not establish a broad constitutional right to the effective assistance of post-conviction counsel. see In re Sepulvado, 707 F.3d 550, 556 (5th Cir 2013); Chunestudy v State, 2014 Ark 345, 438 SW3d 923, 930 (Ark 2014) (Trevino clarified aspects of Martinez but it did not require states to provide counsel to every petitioner

in a collateral attack on a judgment.") And it is also true that the equitable rule created by those cases does not apply directly in state court. see Banks v State, 150 So3d 797, 799-800 (Fla 2014) ("We have held that Martinez applies only to federal habeas proceedings and does not provide an independent basis for relief in state court proceedings...nor does Trevino.") Evans v State, 868 NW2d 227, 229 n. 3 (id 2015) (observing that holdings of Martinez and Trevino "pertain to the doctrine of procedural default in federal habeas cases and are inapplicable in state-court proceedings.") Nevertheless, the reasoning underlying Martinez and Trevino applies with equal force in state courts as it does in federal courts, and the wisdom of those cases should serve as a starting point for "an important dialogue...about what procedures states need to have to give defendants an opportunity to vindi cate their Sixth Amendment rights to effective trial counsel." see Commonwealth v Holmes, 621 Pa 595, 79 A3d 562, 583 (Pa 2013) (observing that Martinez and Trevino reaffirmed "the centrality of claims of ineffective assistance of trial counsel," the "bedrock importance of effective counsel at trial," and the derivative importance of opportunities to litigate claims of trial counsel's ineffectiveness.") The reasoning of those cases strongly suggests that, by channeling ineffective-assistance claims to post-conviction review, which is a stage at which most defendants are unrepresented by counsel the current Texas scheme presents an unacceptable risk that defendants' valid Sixth Amendment claims will go unremedied. One legal commentator has recognized this problem by asking, "How does a criminal defendant remedy the deprivation of a right that he cannot raise procedurally until he is no longer constitutionally entitled to an attorney?" see Ty Alper, Toward a Right to Litigate Ineffective Assistance of Counsel, 70 WASHLEE L. REV. 839, 840, 845-46 (2013) (observing that, as a practical matter, "the current state of the law ensures that the vast majority of convicted noncapital defendants have no recourse to raise ineffective assistance of counsel claims and thus no mechanism for vindicating the requirement that the counsel Gideon provides be effective," "so long as noncapital defendants are not provided post conviction counsel, most violations of the fundamental right to counsel at trial are likely to go unremedied.") In response to this quandry, Professor Alper suggests that courts should recognize "a narrow yet critical right to raise a claim of ineffective assistance of trial counsel in at least one forum" at a stage when the litigant is represented by counsel. id @846 In order to give full effect to the dictates in the federal Constitution that guarantee the effective assistance of trial counsel to all criminal defendants, Texas must either, on the one hand, alter its procedural scheme to afford indigent defendants a meaningful opportunity to raise ineffectiveness claims on direct appeal, or on the other hand, remand colorable ineffective-assistance claims to the habeas court for it to appoint counsel. see Alper, supra note 9 @852 ("For the bedrock principle of Gideon to provide meaningful protection to the indigent-accused, counsel must be afforded to allow for the presentation of ineffective assistance of trial counsel claims."

c. Federal Courts and Other State Procedures for Appointing Habeas Counsel

Other jurisdictions employ a multitude of approaches to appointing counsel for pro se habeas

petitioners, and, although most of these approaches are based on the particular statutes in each jurisdiction, they are nevertheless instructive in providing general guidelines for when counsel should be appointed. In a federal habeas proceeding, the magistrate of federal district court judge has the discretion to appoint counsel to a "financially eligible person" whenever the judge "determines that the interests of justice so require." USC §3006A(a)(2)(B). The United States Third Circuit Court of Appeals has explained that in determining whether counsel should be appointed under this provision, a court "must first decide if the petitioner has presented a nonfrivolous claim and if the appointment of counsel will benefit the petitioner and the court. Factors influencing a court's decision include the complexity of the factual and legal issues in the case, as well as the pro se petitioner's ability to investigate facts and present claims." Reese v Fulcomer, 946 F.2d 247, 263 (3rd Cir 1991) see also Hoggard v Purkett, 29 F.3d 469, 471 (8th Cir 1994); Weygandt v Look, 718 F.2d 952, 954 (9th Cir 1983). This provision leaves to the "sound discretion of the district court" whether to appoint counsel. see Engberg v Wyoming, 265 F.3d 1109, 1122 n.10 (10th Cir 2001) In addition to the statutory provision permitting discretionary appointment of counsel in the interests of justice, the federal rules governing habeas proceedings require the appointment of counsel - if it is necessary for the effective utilization of discovery procedures, or whenever an evidentiary hearing is required. see Rules Governing §2255 Proceedings, Rules 6(a), 8(c).

With respect to the approaches taken by state courts in Martinez, the Supreme Court noted that "most jurisdictions have in place procedures to ensure counsel is appointed for substantial ineffective-assistance claims." Martinez, 132 SCt @1319 The Court observed that some states "appoint counsel in every first collateral proceeding," and it identified eight states that routinely appoint counsel to every indigent habeas applicant. id Other states, it explained, appoint counsel "if the claims require an evidentiary hearing, as claims of ineffective assistance often do." id. And, it further observed that other states "appoint counsel if the claims have some merit to them or the state habeas trial court deems the record worthy of further development."

The approaches taken by other jurisdictions are informative in highlighting the types of considerations that may give rise to a finding that appointment of counsel is necessary in a post-conviction proceeding. These approaches are consisten in suggesting that, in determining whether to appoint counsel, courts should consider whether the face of the record indicates the presence of disputed or unresolved factual issues that are in need of development, whether the legal issues presented are so complex as to make it unlikely that a pro se litigant could adequately address them, whether the pleadings or other information in the record reveals the existence of a plausible basis for relief or the possible existence of a non-frivolous claim, whether the legal questions presented are substantial, and whether the interests of justice require appointment of counsel.

[Justice Alcala suggests to] employ these types of considerations in determining whether, under the existing Texas statutes, which [she] discuss in more detail next, counsel should be appointed to pro se habeas litigants seeking to challenge the effectiveness of their trial attorneys. see

TexasCodeCrimProc art. 11.07 §3(d).

d. Current Texas Statutes Permit Appointment of Habeas Corpus

The problem is not that existing statutes fail to permit the court to ensure that counsel is appointed to assist applicant in pursuit of his ineffective-assistance-of-counsel claim, but rather is that the court generally does not utilize those statutes in such a way as to ensure that counsel is appointed for indigent habeas applicants who have colorable ineffectiveness-assistance claims, based either on the substance of the pro se pleadings or in light of the record. Code of Criminal Procedure Article 11.07 provides that "the convicting court may appoint an attorney or magistrate to hold a hearing and make findings of fact." TEXCODECRIMPROC art 11.07 §3(d). Thus, anytime a hearing is deemed necessary, Article 11.07 expressly authorizes appointment of counsel. In addition, the Code of Criminal Procedure more generally permits a court to appoint counsel in any criminal proceeding "if the court concludes that the interests of justice require representation." id. art 1.051(c). And, more particularly, the Code mandates that an "eligible indigent defendant is entitled to have the trial court appoint an attorney to represent him" in "a habeas corpus proceeding if the court concludes that the interests of justice require representation." Id art. 1.051(d)(3) The existing statutes, therefore, provide an adequate basis upon which to conclude that appointment of counsel is required in any case in which either the pleadings or the face of the record gives rise to a colorable, nonfrivolous claim for which legal expertise is required in order to ensure that the claim is afforded meaningful consideration.

The Supreme Court acknowledged that, because of the lack of appointed counsel for the purpose of raising ineffectiveness claims on habeas, litigants with meritorious claims may be deprived of any meaningful opportunity to present their claims. And the problem was significant enough that the Supreme Court had to modify its federal procedural-default law in order to now permit federal courts to review these state claims in the first instance without deference to state courts. The Supreme Court's reasoning in Martinez and Trevino refutes any suggestion that the existing safeguards for providing quality appointed counsel at trial and on direct appeal are adequate to prevent valid claims of ineffectiveness from arising in the first place.

The Effects of Shinn

Federal habeas review had provided a stop gap measure for the states until Shinn v Ramirez, 596 US 366. Since states began to defer IAC claims to state habeas proceedings, the Supreme Court temporarily resolved the situation via Martinez and Trevino. Now with Shinn the federal courts have stepped away. The federal forum afforded in Martinez and Trevino no longer remedies the constitutional

violations because defendants cannot present new evidence in support of their IAC claims. The federal courts' departure leaves a constitutional void that the states must fill.

Finding a Remedy

Defendants have a constitutional right to counsel to raise an IAC claim, in Texas, where they defer trial IAC claims to state habeas. This constitutional right derives from three propositions. First, the constitutional right to the effective assistance of counsel, which extends to a defendant's first appeal, including a right to a forum in which to vindicate that right, namely a proceeding that allows defendants to present an IAC claim. Second, the right to raise an IAC claim includes the right to present evidence in support of that claim. Third, defendants have a right to challenge the efficacy of their initial trial counsel with effective assistance of counsel, regardless of when a state permits them to first raise that claim. Since all three of these propositions are true, defendants in Texas and states that defer IAC claims to state habeas proceedings have a right to counsel in their initial state habeas proceeding.

Criminal defendants have a right to the assistance of counsel at trial and on direct review, and the performance of counsel must be at least minimally effective at both stages. Defendants, as of now, hold no constitutional right to effective assistance of counsel during collateral review. Martinez allowed defendants to challenge the efficacy of their initial trial counsel in federal court if their state habeas counsel was ineffective in raising the claim, or non existent as in Texas. The Court acknowledged Shinn would render Martinez (Trevino) claims in federal court futile. These defendants are therefore deprived of the ability to challenge the efficacy of their initial trial counsel with assistance of constitutionally adequate counsel. In other states where trial IAC claims can be raised on direct appeal, this is not so, because there is a Sixth Amendment right to effective assistance of counsel on direct appeal. Since Texas

procedural rules deprives defendants of the right to bring that IAC claim with the effective assistance of counsel, it violates the Sixth and Fourteenth Amendments as interpreted by the Supreme Court. Thus, the Constitution requires Texas to institute remedial procedures. Holding otherwise would require either overruling longstanding precedent or upsetting bedrock principles of our constitutional system.

Establishment of Right to Habeas Counsel

Defendants not only have a right to effective assistance of counsel on direct appeal, they are also entitled to the remedy of challenging the efficacy of that counsel in court. This remedy encompasses presenting evidence in support of the constitutional claim. If a state defers defendants ability to raise certain constitutional claims, where they are entitled to effective counsel under the Sixth Amendment to a subsequent proceeding, this entitlement should carry over to the subsequent proceeding.

The right to raise IAC claims regarding counsel in proceedings during which the defendant had a constitutional right to counsel is firmly rooted in the Sixth Amendment. The Supreme Court's decisions regarding the right to counsel assume access to a remedy. In Strickland, the Supreme Court described constitutionally ineffective counsel as counsel "so defective as to require reversal of a conviction," holding that the Constitution requires reversal, a judicial remedy. If constitutionally defective counsel necessitates reversal, there must be some means to achieve that constitutionally required result.

If the constitutional procedural protections are to mean anything, they must mean, at a minimum, that individuals have the right to resist criminal punishment by challenging the constitutionally validity of the procedures afforded to them . When the state fails to provide constitutionally required procedures to criminal defendants, it fails to uphold the Constitution. see Evitts, 469 US @396 (The Constitutional mandate is addressed to the action of the State in obtaining a criminal conviction through a procedure that fails to meet the standards of

due process of law.")

Procedural due process requires defendants have a means of remedying the ineffective assistance of counsel. The Court has regularly held that defendants in enforcements proceedings have a right to raise defects in those proceedings. see Hamdi v Rumsfeld, 542 US 507, 524-25 (2004) (acknowledging the petitioner's right to challenge, under the Due Process Clause, the procedures used to determine detentions); London v City & Cnty Denver, 210 US 373, 386 (1908) (invalidating a state's tax assessment after hearing the taxpayers' due process challenge to the procedures afforded them); Armstrong v Manzo, 380 US 545, 352 (1965) (emphasizing that the only way for the trial court to remedy the violation of the defendant's procedural due process right to be heard was by setting aside the decree in question.)

The Supreme Court has never explictly held that procedural due process requires that defendants can argue their counsel was constitutionally deficient, but it would strain existing precedent to hold otherwise. A state procedural law violates procedural due process when "it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." see Peterson v New York, 432 US 197, 201-02 (1977) (quoting Speiser v Randall, 357 US 513, 523 (1958)) Effective assistance of counsel is essential to the right to a fair trial protected by procedural due process.

Supreme Court precedent establishing that the Sixth Amendment and the fourteenth Amendment's Due Process Clause require defendant's have an opportunity to remedy defects in their conviction. Because the Constitution, through the Sixth and Fourteenth Amendments, grants defendants the right to raise IAC claims, it also grants them the right to present evidence in support of these claims. What Shinn changed is that now defendants lack a forum in which to provide evidence in support of their claim. As Justice Sotomayor's dissent in Shinn observed, "Demonstrating that counsel failed to take measures by definition requires evidence beyond the trial record." Because defendants are entitled to a remedy for constitu-

tional inefficacy of their counsel, they must be allowed to present evidence to prove such IAC claims.

When states like Texas deter defendant's constitutional right to raise an IAC claim with constitutionally effective counsel until state habeas review, they defer the entire right. If states could, by delaying the claim of state habeas, extinguish the right to effective counsel while raising the claim, then it was no right at all. Put differently, the Court's holding in Martinez, that a defendant may challenge the efficacy of their trial counsel once with effective assistance of counsel, is constitutionally required. In the absence of Martinez hearings in federal court, the Constitution requires some remedy. see Martinez v Ryan, 566 US 1, 8 (commenting that where collateral review is the first time a defendant may raise an IAC claim it "may justify an exception to the Constitutional rule that there is no right to counsel in collateral proceedings." Citing Coleman v Thompson, 501 US 722, 755; Douglass v California, 372 US 353, 357 (1963) A defendant is entitled to challenge the efficacy of their initial trial counsel with the effective assistance of counsel and if the right to challenge the efficacy of their trial counsel is deferred, as it is in Texas, the right to challenge it with effective assistance of counsel should travel with it.

When the Supreme Court confronted a similar situation it also left the procedural remedy to the states. In Young v Ragen, 337 US 235 (1949), the Court addressed the question of what procedures should be afforded to a defendant deprived of their federal rights in state court. Despite the violation of a federal right, the Court did not explore a remedy in federal court. Requiring states to provide a forum for constitutional violations is not only consistent with past Supreme Court practice, but it also addresses the federalism concerns in the Court's decision in Shinn and Justice Scalia's dissent in Martinez. Both opinions emphasized how the federal proceeding infringed on state sovereignty.

The Court's decision in Shinn resurrected the constitutional issue by

withdrawing the federal courts from most of these cases. As the Supreme Court explained in Martinez, states' decisions to defer IAC claims to subsequent proceedings, though premised on sound reasons, "are not without consequences." see Martinez, 566 US @13 with the federal courts now largely out of the picture, it is time for states to face those consequences. They must either guarantee the effective assistance of counsel in initial state habeas proceedings for trial IAC claims, or they must abandon their procedures deferring IAC claims to state habeas proceedings.

Texas Disregard of the Law

It is a longstanding joke in Texas that a cheeseburger could be indicted here. A defendant is supposed to be guaranteed the structural protection provided by the grand jury, but most importantly, to serve as a buffer between the individual and oppressive governmental prosecution. With 95% of all convictions following guilty pleas and not trials, and no remedy for indigent pro se litigants to hold their trial counsel, or plea counsel, accountable to be effective, and Texas disregard for the law, Texas can effectively indict anyone and hide them in prison. In this current political climate where you can be picked up off the street and kidnapped, pardon me, deported to another country without due process, see Dep't of Homeland Sec. v D.V.D, 2025 US LEXIS 2487 it is imperative that indigent criminal defendants are entitled to a forum to present evidence to hold their appointed trial counsel accountable in performing their duty effectively. The right to effective counsel was granted by the Sixth Amendment, however article Six of the Constitution unequivocally states the "Constitution, and the Laws of the United States" "shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby." see USCS Const. Art. VI, cl2 Unless Texas has succeeded the United States and is again the Republic of Texas, Texas judges shall be bound by the Constitution and the findings of the Supreme Court, or at least Texas own Constitution and rulings.

Rothgery was ruled on in 2008, and you can turn on any news broadcast in

Houston and view "15.17 hearings" being held with a room full of arrested persons, without a single attorney anywhere. If a withdrawal hearing is indeed a critical stage, it is shown that at two different and seperate stages Banks stood without counsel, both the "15.17 proceeding," which the Supreme Court established was a critical stage and again when Banks alone had to allege McCray was ineffective, at the hearing on the MIWJAPOG.

Banks pleaded to Judge Stahl at the hearing for MIWJWAPOG "the seriousness of this case, I need someone to actually look into the information of my case and look into the facts of my case." This continues to be Banks' plea. Cornelius Cox, a lawyer, and McKay, a private investigator, have both provided affidavits that not only contradict the affidavit of Hubert McCray, but compliment each other, despite not speaking with each other about the subject. Banks would be remiss to fail to mention that an adequate, full and fair fact finding procedure would have ascertained the truth in the original proceeding, but instead the trial court failed to acknowledge the affidavit. The CCA's ruling in Ex Parte Guzman prompted Banks to file the subsequent application, since the affidavit from McKay was "unavailable" at "the date the applicant filed the previous application." Banks requested an evidentiary hearing numerous times throughout the original and subsequent proceedings, and continues to request an evidentiary hearing to ascertain the truth of the contradictions of the affidavits of Banks, McCray, Cox, and McKay.

The affidavit presented by McKay about his conversation with McCray, not only happened after Petitioner filed his initial writ, but was not solicited by Banks. Banks had no knowledge of McKay's existence prior to filing the original application. This sworn affidavit, gives a factual basis for claims of ineffective assistance of counsel, involuntary and unknowing plea, and conflict of interest. Banks had no way of knowing the reason, the mindset, nor reasoning behind the decisions made by McCray, however the skilled, experienced and licensed private investigator, McKay, was able to ascertain the truth from McCray and was able

to get him to admit that he had not conducted an investigation, which is necessary in advising any client on pleading guilty, but the motive behind his lack of testimony at the hearing on the MTWJWAPOG.

If Banks would have been appointed an attorney when the court established there were designated issues, one being ineffective assistance of counsel, since the Supreme Court has recognized that there may be a limited right to counsel if a particular constitution claim can be raised for the first time only on post-conviction proceedings. see Coleman v Thompson, 501 US 722, 755 (1991) and, the Court indicated the ineffective assistance of counsel claims should be brought in collateral proceedings because the trial record is insufficiently developed to litigate such a claim at the direct review stage. see Massaro v US, 538 US 500, 504 (2003) Lastly, the court established the importance of having at least one court adjudicate the merits of an ineffective assistance of counsel claim. see Martinez and Trevino.

To make matters worse Ex Parte Dawson (509 SW3d 294) reveals "further insight and transparency into the Court's inner workings," and how the CCA's "long - established practice" and "Court's standing internal procedures" are "violating the Texas Constitution and statutes," by being "disposed of as if they had been considered by a quorum of this Court, but in actuality are seen and considered by only a single judge on this court." "A staff member recommended that relief be denied and that this case be assigned to a single judge who, if agreed with that recommendation, would sign an order to that effect without consulting the en banc Court."

On August 15, 2018, Banks filed a MTWJWAPOG, where contends "that his plea of guilty and jury waiver was involuntary and unknowing and or was based on the ineffectiveness of counsel." On August 27, 2018, Honorable Judge Catherine Torres-Stahl held a hearing on the MTWJWAPOG, where Banks pleads with the court, "The seriousness of this case, I need someone to actually -- actually look into the information of my case and look into the facts of my case." In which McCray's

response was, "I would divulge confidential information and communication..."

On October 10, 2018, Honorable Catherine Torres-Stahl had a Sentencing Hearing, where newly appointed attorney, Cornelius Cox, went on "just for the record," "I would like to renew his motion -- There's a motion on file for a withdrawal of a plea. I was not the -- the attorney that referenced that -- that motion itself. But in terms of my conversations with my client -- And -- And I wasn't there when that motion was done -- it appears that he was not adequately advised as to the consequences of his plea.

I feel, at this point, that based on that, that his plea that he gave is not free and voluntary. And based on that background, I'm asking the Court to reconsider because my client's position is that he feels, at this point, that he did not commit these offenses."

On September 13, 2019, licensed private investigator, McKay spoke with McCray, and even after being told that McKay was not conducting a writ investigation on behalf of Banks but was inquiring about the case on behalf of a concerned friend," McCray discussed the case with McKay. McCray told McKay Banks "claimed he was innocent of sexual assault and kidnapping," "did not direct Andrew Watson," appointed Defense Investigator, "to do any investigation," "there was no investigation of the crime scene, no interview of witnesses or any background investigation of complaining witnesses conducted by either the attorney or investigator." "The defense did not conduct interviews of any of the state witnesses." Banks, "did not want to accept a plea bargain."

"Todd McCray said the defendant later wanted to withdraw his plea and told the court his defense attorney did nothing for him. Todd McCray told me he thought his client was trying to throw him under the bus and the Judge allowed him to withdraw from the case." McCray also told McKay, "the evidence in this case was substantial and the defense was about mitigation and not guilt/innocence."

Banks contends he has presented an affidavit with alleged facts of ineffective assistance of counsel, involuntary and unknowing plea, and conflict of interest, that if substantiated at an evidentiary hearing, would entilte him to relief. see Townsend v Sain, 372 US 293, 312; Schiro v Landrigan, 550 US 455, 499. A defendant who enters [a guilty] plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront accusers. For this waiver to be valid under the Due Process Clause, it must be "an intentional relinquishment or abandonment of a known right or privilege." Johnson v Zerbst, 304 US 458, 464 (1938) Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts. see McCarthy v US, 394 US 459, 466; Boykin v Alabama, 395 US 238, 249 A judgment of conviction obtained in violation of due process of law is void for want of jurisdiction of the court to enter such judgment. Fay v Noia, 372 US 391 (1963) Any judgment may be collaterally attacked if it is void for lack of jurisdiction. "A defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding." Ins. Corp of Ireland LTD v Compagnieles Guine, 456 US 694, 706, 102 SCt 2099 (1982); Jacuzzi v Pimienta, 762 F.3d 419 (5th Cir. 2014)

I raised my right hand and vowed to protect the Constitution of this Contry against terrorist both foreign and domestic. Went to two different wars with absolutely no hesitation or mental reservation, to stand up for this Country. Now I'm asking My Country to stand up for me, and for the Constitution to protect me. When I plead guilty I may have waived my right to trial by jury, to confront my accusers, and my right against self-incrimination, but I did not waive my right to effective assistance of counsel.

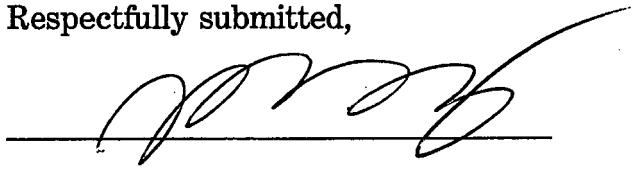
Texas has neither worked toward improving the inadequate system nor appointing counsel for indigent applicants on collateral proceedings. Despite the continual pleas of Justice Alcala, that "unless indigent applicants are afforded the assistance of appointed habeas counsel to raise their substantial ineffectiveness claims, Texas essentially has no adequate vehicle for defendants to litigate that issue." see Ex Parte Davis, 2016 TexCrimApp Unpub LEXIS 682 headnote 1, @p 6; Ex Parte Garcia, 2016 TEXCrimApp LEXIS 71 @36 What Shinn changed is that now defendants lack a forum in which to provide evidence in support of their claim. In the absence of Martinez (Trevino) hearings in federal court, tha Constitution requires some remedy.

I understand by the Court ruling to allow appointed counselor for post conviction review it assumes it would create a catastrophic windstorm in the courts and as much as I would love to take care of everyone that I know is getting the short end of the stick, I honestly just want an evidentiary hearing to have the ability to prove that my lawyer was ineffective, causing my plea and waiver to be unknowing and involuntary, and my conviction void. This is my request knowing that to grant me an evidentiary hearing is essentially granting me counsel, and allows this Court to continue to not weigh in on a matter that is detrimental to the "bedrock principal in our justice system." For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Texas Court of Criminal Appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 14, 2025