

25-5642

No. _____

ORIGINAL

In the

Supreme Court of the United States

TONNERRIOUS JAMARCUS MCGEE,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition for a Writ of Certiorari to Fourteenth Court of Appeals, Houston, Texas

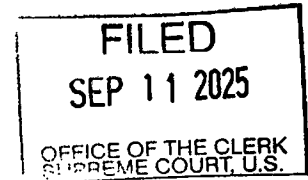
PETITION FOR A WRIT OF CERTIORARI

Tonnerrious McGee

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QUESTIONS PRESENTED

1. Whether the Trial Court 122nd District Court (Galveston County) Texas use of a visiting trial judge who was not properly appointed nor noted on the clerk record and whose appointment was neither requested nor consented to by either party, violates a defendant's right to due process under the Fourteenth Amendment. And whether this issue is adversely going against the State of Texas Government Code, Tex. Gov't Code § 26.016 (West 2023) and Tex. Gov't Code § 26.024 (West 2023)
2. Whether a conviction and sentence based on factually inaccurate and materially false testimony—particularly related to the identification of the defendant—violates a defendant's Sixth and Fourteenth Amendment rights to a fair trial and due process.
3. Whether sentencing a defendant as a felony when the offense charged by indictment is classified under state law as a misdemeanor constitutes a violation of due process under the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

Tonnerrious Jamarcus McGee, Petitioner

Fred Garrett, Attorney for McGee (trial)

Joel Bennett, Attorney for McGee (appeal)

State of Texas, Respondent

Jack Roady, Galveston County District Attorney

Brianna Stark, Assistant Galveston County District Attorney

Ricque Davis, Assistant Galveston County District Attorney

Judge Jeth Jones, 122nd Dist. Ct. Galveston Co.

Visiting Judge John Ellisor, 122nd Dist. Ct. Galveston Co.

Justice Ken Wise, Fourteenth Court of Appeals

Justice Chad Bridges, Fourteenth Court of Appeals

Justice Maritza Antú, Fourteenth Court of Appeals

State Prosecuting Attorney, Stacey Soule

The Court of Criminal Appeals of Texas

David J. Schenck Presiding Judge of Court of Criminal Appeals of Texas

Attorney General of Texas

Governor of Texas

RELATED CASES

- The State of Texas v. TONNERRIOUS JAMARCUS MCGEE. 23-CR-0270, 122ND District Court of (Galveston County) Texas. Judgement entered January 11, 2024

- Tonnerrious Jamarcus McGee v. State of Texas. 14-24-00102-CR, Fourteenth Court of Appeals, Houston, Texas. Judgement entered April 10, 2025
- MCGEE, TONNERRIOUS JAMARCUS v. State of Texas. PD-0285-25, Court of Criminal Appeals. Judgement entered June 18, 2025

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Tonnerrious Jamarcus McGee discloses the following. There is no parent corporation or publicly held company owning 10% or more of the stock of petitioner Tonnerrious Jamarcus McGee.

TABLE OF CONTENTS

Opinion Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	4 - 5
Reasons for Granting the Writ	6 - 7
Conclusion	8

Index of Appendices

- Appendix A - Fourteenth Court of Appeals, Houston, Texas Memorandum Opinion
- Appendix B - Fourteenth Court of Appeals, Houston, Texas Judgement
- Appendix C - 122nd District Court of (Galveston County) Texas Judgement
- Appendix D - Court of Criminal Appeals of Texas Denying Review
- Appendix E - 122nd District Court of (Galveston County) Texas Indictment
- Appendix F - 122nd District Court of (Galveston County) Texas Docket Control Order

TABLE OF AUTHORITIES

Cases

Hernandez v. Texas, 347 U.S. 475 (1954)	5
Estes v. Texas, 381 U.S. 532 (1965)	4
Pointer v. Texas, 380 U.S. 400 (1965)	4
Board of Regents v. Roth, 408 U.S. 564 (1972)	5
Plyler v. Doe, 457 U.S. 202 (1982)	4
Bernal v. Fainter, 467 U.S. 216 (1984)	5

Statutes

U.S. Const. amend. VI	6
U.S. Const. amend. XIV, § 1	6
Tex. Gov't Code Ann. § 24.003(d) (West 2023)	4
<i>Tex. Gov't Code</i> § 26.022(d) (West 2025)	4

Rules

Sup. Ct. R. 13.1	7
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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

The opinion of **Tonnerrious Jamarcus McGee v. The State of Texas**, No.

14-24-00102-CR (Tex. App.—Houston [14th Dist.] Apr. 10, 2025) (mem. op., not designated for publication) appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was **June 18, 2025** . A copy of that decision appears at Appendix **D**.

This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. Const. amend. VI – Right to a fair trial.
- U.S. Const. amend. XIV, § 1 – Due process and equal protection under the law.
- Tex. Gov't Code Ann. § 26.022(d) (West 2025) - The motion for appointment and the order appointing the visiting judge shall be noted on the docket.
- Tex. Gov't Code Ann. § 24.003(d) (West 2023) - The district judge in whose court the matter is pending may proceed to hear, complete, and determine the matter, or all or any part of another matter, and render a final judgment

STATEMENT OF THE CASE

Petitioner was convicted by a jury on January 11, 2024, in the 122nd District Court of Galveston County, Texas, for evading arrest with a vehicle. The case was presided over by a visiting judge John Ellisor whose appointment was not supported by any record, motion, or order by the court or the parties, in violation of Tex. Gov't Code Ann. § 24.003(d) (West 2023) and *Tex. Gov't Code* § 26.022(d).

Petitioner appealed on grounds including: (1) improper judicial authority due to the absence of a properly appointed trial judge; (2) insufficient and unreliable eyewitness identification, including discrepancies in license plate records and photographic identification based on a booking photo instead of a driver's license photo; and (3) being sentenced as a third-degree felony despite the indictment and offense code (48010020) indicating a third-degree misdemeanor classification under the Texas Department of Criminal Justice offense severity list.

The petitioner is entitled to equal protection under law *Plyler v. Doe*, 457 U.S. 202 (1982). Fourteenth Amendment's Due Process and Equal Protection Clauses ensure that no defendant is deprived of liberty without fair procedures or subjected to discriminatory treatment under the law. The Supreme Court has consistently held that due process requires not only notice and the opportunity to be heard, but also that criminal trials be conducted with fundamental fairness. In *Pointer v. Texas*, 380 U.S. 400 (1965), the Court incorporated the Sixth Amendment's Confrontation Clause against the states, guaranteeing the right of a criminal defendant to confront and cross-examine adverse witnesses. Likewise, in *Estes v. Texas*, 381 U.S. 532 (1965), the Court held that excessive

media coverage during trial proceedings violated the defendant's right to a fair trial, emphasizing that due process protects the integrity and impartiality of the courtroom.

Beyond procedural safeguards, equal protection also prohibits discriminatory practices that undermine the fairness of criminal proceedings. In *Hernandez v. Texas*, 347 U.S. 475 (1954), the Court found that the systematic exclusion of Mexican Americans from juries constituted an equal protection violation, affirming that jury selection processes must be free from racial or ethnic bias. These protections are not limited to trial procedure but extend to laws and practices that impair a defendant's access to justice. For example, in *Bernal v. Fainter*, 467 U.S. 216 (1984), the Court struck down a Texas law barring non-citizens from serving as notaries public, reinforcing the principle that classifications based on alienage are inherently suspect and subject to strict scrutiny.

Finally, the threshold for due process protection was clarified in *Board of Regents v. Roth*, 408 U.S. 564 (1972), where the Court explained that procedural safeguards apply when a person has a legitimate claim of entitlement to a protected liberty interest—a principle that extends to a criminal defendant facing potential incarceration. These decisions collectively establish that a criminal defendant is entitled not only to procedural protections, but to a trial and legal process free from bias, structural inequality, and arbitrary deprivation of fundamental rights.

The Fourteenth Court of Appeals affirmed the conviction. The Texas Court of Criminal Appeals declined to review the case on discretionary review.

REASONS FOR GRANTING THE PETITION

I. The Use of an Improperly Appointed Visiting Judge Raises a Serious Due Process Violation

Due process requires that criminal trials be conducted by judges who are lawfully appointed and recognized under state law. The Constitution's Due Process Clause is violated where the trial judge lacks lawful authority, particularly when the defendant does not receive proper notice or opportunity to object rev. U.S. Const. amend. XIV, § 1.

II. The Conviction Was Based on Materially False or Unreliable Testimony, Violating Due Process and the Right to a Fair Trial

This Court has consistently held that convictions based on unreliable or materially false evidence violate due process. In this case, the arresting officer identified the Petitioner based on a misread license plate and a booking photo unrelated to the offense. These critical discrepancies—especially concerning identity—raise serious questions about the integrity of the verdict.

III. Sentencing a Defendant Based on a Misclassified Offense Is a Constitutional Violation

Petitioner was sentenced under felony guidelines despite being indicted for an offense listed in the Texas Department of Criminal Justice as a misdemeanor U.S. Const. amend.

VI. This misclassification resulted in a longer sentence and harsher consequences, contrary to this Court's precedent that prohibits sentencing based on materially false assumptions

IV. Timely filed the PETITION FOR A WRIT OF CERTIORARI

Pursuant to Rule Sup. Ct. R. 13.1 the petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review. The Court of Criminal Appeals Texas refused Petition for Discretionary Review on June 18, 2025 and deadline to file writ of certiorari is on or by September 16, 2025.

CONCLUSION

This case presents substantial federal questions about judicial authority, due process, and sentencing fairness. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tonnerrious McGee

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Petitioner (Pro Se)

Dated: September 10, 2025