

25-5992

IN THE
UNITED STATES SUPREME COURT

FILED

FEB 07 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN RE
ROGER LARRY McCLURE,
(PETITIONER)

VS.

§

CAUSE No. _____

ERIC GUERRERA,
DIRECTOR OF TDCJ-ID,
(RESPONDENT)

§

ORIGINAL

PETITION FOR EXTRAORDINARY WRIT
OF HABEAS CORPUS

CHALLENGE TO STATE COURT CONVICTION
IN CAUSE NO. 34,787, AND WR-79,112
66TH DISTRICT COURT, HILL COUNTY, TEXAS

RESPECTFULLY SUBMITTED,

ROGER LARRY McCLURE
PETITIONER, PRO SE
TDCJ #01539918
MEMORIAL UNIT
59 DARRINGTON Rd.
ROSHARON, Tx. 77583

QUESTION OF THE ISSUES PRESENTED

1. WHETHER OR NOT COUNSEL'S ADVICE TO PETITIONER, TO FOREGO A TWENTY (20) YEAR PLEA OFFER, WHEN THE STATE THREATENED TO RE-VISIT THE "CAPITAL MURDER" COMPONENT OF OFFENSE, RISKING "LIFE WITHOUT PAROLE", IF TAKEN TO TRIAL, WAS DEFICIENT PERFORMANCE AND DISQUALIFY COUNSEL FROM FUNCTIONING WITHIN THE WIDE REALM OF COMPETENCE DEMANDED OF ATTORNEYS, WHEN COUNSEL'S ADVICE CAUSED PETITIONER TO SUFFER "LIFE WITHOUT PAROLE?"

2. WHETHER OR NOT PETITIONER HAS NO OTHER FORM OR COURT TO APPEAL TO FOR RELIEF, AFTER LOWER COURT'S RULINGS, LEAVING THIS COURT AS THE SOLE POWER TO GRANT WRIT RELIEF IN ADDRESSING THE CONSTITUTIONAL MERITS OF PETITIONER'S WRIT CLAIMS.

TABLE OF CONTENTS

	<u>PAGE</u>
I. QUESTION OF THE ISSUES PRESENTED	I
II. TABLE OF CONTENTS	II
III. INDEX OF AUTHORITIES	III, IV
IV. LIST OF ALL PARTIES	V
V. REQUEST FOR ORAL ARGUMENTS	VI
VI. PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS	1
VII. PLEA FOR LIBERAL SCRUTINY	1-2
VIII. JURISDICTION	2
IX. PROCEDURAL HISTORY	3-5
X. PROCEEDINGS IN THE CASE	5-8
XI. STATEMENT OF THE FACTS	8-11
XII. REASON FOR GRANT OF THE EXTRAORDINARY WRIT OF HABEAS CORPUS	11-13

TABLE OF CONTENTS, Cont'd:

PAGE

XIII. POINT OF ERROR NUMBER ONE (1)	
TRIAL COUNSEL RENDERED UNREASONABLE, INEFFECTIVE ASSISTANCE OF COUNSEL FOR OMITTING TO EXPLAIN AND ADVISE PETITIONER OF THE UNDUE RISK IN FOREGOING PLEA OFFER OF TWENTY (20) YEARS AND GOING TO TRIAL ON CAPITAL MURDER OFFENSE	
ARGUMENTS, AUTHORITIES AND DISCUSSIONS. . .	13-
IXV. PRAYER FOR RELIEF	18-
XV. AFFIDAVIT	20
XVI. CERTIFICATE OF SERVICE	20
XVII. APPENDIX	
(COPY OF STATE COURT AND FEDERAL COURT RULINGS)	APP

INDEX OF AUTHORITIES

	<u>PAGE</u>
<u>ERICKSON v. PARDUS</u> ,	127 S.CT. 2197, (2003). .2
<u>EX PARTE ARGENT</u> ,	393 S.W. 3D 781 (TEX. CR. APP. 2013). . 17
<u>EX PARTE LENKE</u> ,	13 S.W. 3D 791, (TEX. CR. APP. 2000). . 16,17
<u>EX PARTE WILSON</u> ,	724 S.W. 2D 72, (TEX. CR. APP. 1987). . 16,17,18
<u>HAINES v. KERNER</u> ,	92 S.CT. 594, (1972). . 1
<u>HILL v. LOCKHART</u> ,	105 S.CT. 833, (1985). .16
<u>IN RE KING</u> ,	697 F.3D 1189, (C.A. 5 - 2012).7
<u>LAFLER v. COOPER</u> ,	132 S.CT. 1376, (2012). .6,7,8,13, 14,18
<u>MISSOURI v. FRYE</u> ,	132 S.CT. 1399, (2012). .6,7,8,13, 18
<u>SLACK v. McDANIEL</u> ,	120 S.CT. 1595, (2000). .11,18
<u>STRICKLAND v. WASHINGTON</u> ,	

INDEX OF AUTHORITIES, Cont'd:

PAGE

104 S.Ct. 2052, (1984)..16,17

WILLIAMS v. TAYLOR, 120 S.Ct. 1495, (2000). .11,12,18

CONSTITUTION:

RULES OF SUPREME COURT:

STATUTE:

² 28 U.S.C. § 1651,

²⁰ 28 U.S.C. § 1746,

OTHER:

AMERICAN BAR ASSOCIATION STANDARDS, 17, 18

LIST OF ALL PARTIES

1. HON. BOB McGREGOR, JUDGE
(66TH DISTRICT COURT)
HILL COUNTY, TEXAS
2. HON. DAN DENT
HILL COUNTY DISTRICT ATTORNEY
3. HON. NICOLE CRAIN
HILL COUNTY ASST. DISTRICT ATTORNEY
4. HON. DWIGHT CARMICHAEL
ATTORNEY AT LAW
HILL COUNTY, TEXAS
5. TEXAS COURT OF CRIMINAL APPEALS
6. SMITH, SOUTHWICK AND WILSON,
(CIRCUIT JUDGES)
U.S. COURT OF APPEALS, 5TH CIR.

IN THE
UNITED STATES SUPREME COURT

IN RE
ROGER LARRY McCLUER,
(PETITIONER)

VS.

§

CAUSE No. _____

ERIC GUERRA,
DIRECTOR OF TDCJ-ID,
(RESPONDENT)

§

PETITION FOR EXTRAORDINARY WRIT
OF HABEAS CORPUS

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, ROGER LARRY McCLUER, PETITIONER, PRO SE, IN THE ABOVE STYLED AND NUMBERED CAUSE, FILES THIS HIS 'PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS', IN GOOD FAITH, CONTENDING DUE PROCESS AND THE INTEREST OF JUSTICE WOULD BE BEST SERVED BY THIS COURT GRANTING THE SAME, AND IN SUPPORT THEREOF, YOUR PETITIONER WOULD SHOW UNTO THIS HONORABLE COURT THE FOLLOWING:

I.

PLEA FOR LIBERAL SCRUTINY

THAT YOUR PETITIONER RESPECTFULLY REQUEST OF THIS COURT TO ACCORD HIM THE 'PROTECTION' THAT COMES WITH PRO SE LITIGATION, AND SEEK OF THIS COURT TO CONSTRUE THIS HIS 'PETITION' LIBERALLY, AS REQUIRES IN HAINES v. KERNER, 92 S.Ct. 594, (1972); ERICKSON v. PARDUS, 127 S.Ct. 2197, (2007), AND RELATED CASES. YOUR PETITIONER IS A LAYMAN AND SHOULD NOT BE HELD TO THE SAME STRINGENT STANDARD OF PROFESSIONAL DRAFTSMANSHIP, REQUIRED OF ATTORNEYS.

II.

JURISDICTION

THAT THIS COURT HAS JURISDICTION TO ENTERTAIN SAID 'PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS', PURSUANT TO RULES 10, 20, RULES OF THE SUPREME COURT; 28 U.S.C. § 1651 (A); U.S.C.A., AMEND. 5; 14. MOREOVER, YOUR PETITIONER SPECIFICALLY AND POINTEDLY ASSERTS EXCEPTIONAL CIRCUMSTANCES EXIST THAT WARRANTS THIS COURT'S EXERCISE OF ITS SUPERVISORY AND DISCRETIONARY POWERS, IN THAT, THE RELIEF HE SEEKS CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT, AS THE LOWER COURTS HAVE, THROUGH PROCEDURAL BAR, DEPRIVED PETITIONER OF ANY FAIR AND JUST OPPORTUNITY TO ADVANCE HIS 'MERITORIOUS' CLAIMS BEFORE THE COURT FOR THEIR RESOLUTION, THEREBY INVOKING THIS COURT'S APPELLATE JURISDICTION. SEE RULE 20.1, RULES OF SUPREME COURT; SEE ALSO ARGUMENT ADVANCED, INFRA.

III.

PROCEDURAL HISTORY

THAT YOUR PETITIONER, ON TWO (2) PRIOR OCCASIONS, SOUGHT TO ADVANCE THIS HIS 'PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS' TO THIS COURT, CONTENDING HIS CONVICTION WERE OBTAINED IN BREACH OF FEDERAL LAWS, AS DEFINED BY THE UNITED STATES CONSTITUTION AND THAT HE HAS NO OTHER REMEDY OR NO OTHER COURT IN WHICH TO SEEK RELIEF. THIS COURT RETURNED THE 'PETITION' BACK FOR CORRECTION. IN A RECENT LETTER FROM THIS COURT, DATED JULY 1, 2025, THIS COURT PROVIDED PETITIONER WITH SPECIFIC INSTRUCTIONS OF CORRECTION IN ORDER TO ADVANCE HIS 'PETITION' ADEQUATELY BEFORE THE COURT. PETITIONER ADVANCES THIS 'PETITION' IN COMPLIANCE WITH THE COURT'S LETTER OF SEPT. 30, 2025, SENT TO HIM BY Ms. EMILY WALKER, CLERK OF THE COURT.

THAT YOUR PETITIONER SEEK A CHALLENGE OF HIS 2008 MURDER CONVICTION. PUNISHMENT WAS SET AT 'LIFE WITHOUT PAROLE.' PETITIONER PLEADED NOT GUILTY, CONTENDING THE RECORD EVIDENCE CLEARLY GIVES CREDENCE TO THE MITIGATING CIRCUMSTANCES OF SELF DEFENSE, OR IN THE ALTERNATIVE, THE LESSER INCLUDED OFFENSE OF 'VOLUNTARY MANSLAUGHTER' IN LIGHT OF PROVOCATION ON BEHALF OF THE COMPLAINANT. THE STATE ELECTED TO DROP THE 'CAPITAL' COMPONENT OF THE OFFENSE, AND PROFFERED A PLEA OFFER FOR THE OFFENSE OF MURDER, ONLY, BUT IN LIGHT OF CLEAR DEFICIENT ADVICE FROM COUNSEL, AND THE STATE'S CLEAR SUGGESTION IT WILL 'RE-VISIT' THE "CAPITAL" COMPONENT OF THE OFFENSE, PETITIONER WAS ADVISED BY COUNSEL

TO TAKE A GAMBLE, WHICH RESULTED INTO HIS SUBSEQUENT CONVICTION FOR CAPITAL MURDER AND RECEIPT OF 'LIFE WITHOUT PAROLE'. PETITIONER WAS ILL ADVISED TO REJECT A 35 YEAR, 25 YEAR THEN 20 YEAR OFFER, FOR MURDER, BUT COUNSEL'S DESIRE TO 'GAMBLE' AT PETITIONER'S EXPENSE, RESULTED INTO PETITIONER'S RECEIPT OF WHAT IS TANTAMOUNT TO THE DEATH SENTENCE. (SEE ARGUMENT, INFRA).

PETITIONER CONTENDS HIS CONVICTION WERE OBTAINED IN BREACH OF FEDERAL LAW, AS DETERMINED BY THE UNITED STATES SUPREME COURT, WARRANTING THIS COURT'S EXERCISE OF ITS DISCRETIONARY POWERS, AS THE LOWER COURTS HAS USED 'PROCEDURAL' BAR AS GROUNDS TO COMPLETELY DISREGARD ITS WRIT POWER AND IGNORED THE CONSTITUTIONAL MERIT TO PETITIONER'S ARGUMENT, THEREBY NEGATING THE INHERENT POWER OF THE WRIT, AND SHIRKING ITS DUTY TO ADDRESS WHETHER OR NOT PETITIONER'S CONVICTION WERE OBTAINED IN BREACH OF FEDERAL LAW, AS DETERMINED BY THE UNITED STATES SUPREME COURT. IN LIGHT OF THE EXCEPTIONAL CIRCUMSTANCES PERTAINING TO THE CASE, WHEREIN PETITIONER WAS CAUSED TO RECEIVE 'LIFE WITHOUT PAROLE' DUE TO THE CONSTITUTIONAL BREACH OF THE LACK OF 'EFFECTIVE' ASSISTANCE OF COUNSEL. BUT FOR COUNSEL'S ILL ADVICE, YOUR PETITIONER WOULD HAVE ACCEPTED THE STATE'S TWENTY (20) YEAR OFFER, ESPECIALLY HAD TRIAL COUNSEL, ADVISED HIM OF THE DIRE CONSEQUENCES AND UNDUE RISK OF THE STATE'S WILLINGNESS TO REVISIT THE 'CAPITAL COMPONENT' OF THE CHARGES, IN THE ABSENCE OF THE ACCEPTANCE OF ITS PLEA BARGAIN OFFER. THE LOWER COURT, (TEXAS COURT OF CRIMINAL

APPEALS), DENIED RELIEF PURSUANT TO 'SUCCESSIVE WRIT' WITHOUT ADDRESSING THE CONSTITUTIONAL MERIT OF PETITIONER'S ARGUMENT. (SEE APPENDIX, CAUSE NO. WR-79,112-02, ON 7/13/2022, THE UNITED STATES COURT OF APPEALS, 5TH CIRCUIT, CAUSE NO. 23-50519, HAD ALSO DENIED 'PETITION FOR AUTHORIZATION' TO FILE SUCCESSIVE WRIT. JULY 28, 2023. THE DENIAL, DUE TO PROCEDURAL BAR, DEPRIVED YOUR PETITIONER OF THE FAIR AND JUST CHANCE OF GETTING THE CONSTITUTIONAL MERIT OF HIS CLAIMS RESOLVED, CAUSING HIM TO HAVE NO OTHER FORM, COURT OR APPELLATE JURISDICTION TO ENTERTAIN HIS CLAIM, ADVANCED, INFRA, SAVE FOR THE FILING HIS THIS HIS 'EXTRAORDINARY WRIT OF HABEAS CORPUS' TO THIS COURT FOR RESOLUTION, PLEADING WITH THE COURT TO EXERCISE ITS DISCRETIONARY WRIT POWER, TO CONSIDER MERITS OF PETITIONER'S WRIT CLAIMS. (SEE RULE 20.4(a)).

IV.

PROCEEDINGS IN THE CASE

YOUR PETITIONER WAS ACCUSED OF THE OFFENSE OF MURDER, ALLEGED TO HAVE OCCURRED AGAINST THE COMPLAINANT, ON OR ABOUT OCTOBER 6, 2006, IN HILL COUNTY, TEXAS. PETITIONER PLEADED NOT GUILTY. TRIAL COMMENCED NOVEMBER 17, 2008, BEFORE A JURY, AFTER PETITIONER WAS ILL-ADVISED TO REJECT THE STATE PLEA OFFER(S), AND AFTER THE STATE MADE IT CLEAR THAT IT INTENDED TO RE-VISIT THE 'CAPITAL COMPONENT' OF THE OFFENSE IF PETITIONER REJECTS THE OFFER(S). TRIAL COUNSEL,

ENCOURAGING PETITIONER TO "LET'S TAKE A GAMBLE" AND BELIEVING THE JURY WOULD NOT CONVICT FOR CAPITAL MURDER, DUE TO MITIGATING CIRCUMSTANCES SURROUNDING THE CASE, DEPRIVED PETITIONER OF KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY FOREGOING THE PLEA OFFER AND INSISTING ON TRIAL, WHICH RESULTED INTO PETITIONER'S RECEIPT OF LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE.

PETITIONER APPEALED HIS STATE COURT CONVICTION! THE APPEAL WAS ADVANCED TO THE 14TH JUDICIAL COURT OF APPEALS, LOCATED IN HOUSTON, TEXAS, CAUSE NO. 14-09-00058-CR, AND WAS DENIED 4/13/10. PETITIONER THEN ADVANCED A 'PETITION FOR DISCRETIONARY REVIEW' OF THE LOWER COURT'S RULING, CAUSE NO. PD-1073-10. SAID P.D.R. WAS DENIED 3/2/11, MAKING SAID CASE FINAL. PETITIONER SOUGHT TO COLLATERALLY CHALLENGE HIS CONVICTION, VIA STATE HABEAS WRIT, IN 2012, TRIAL COURT NO. 34,787-A: AND WRIT NO. 79,112-01. SAID WRIT WAS DENIED WITHOUT A WRITTEN ORDER ON 3/20/13. THEREAFTER, [T]HIS HONORABLE COURT ISSUED BACK-TO-BACK RULINGS ON THE SPECIFIC CONSTITUTIONAL CHALLENGE OF 'INEFFECTIVE ASSISTANCE OF COUNSEL' WHEN COUNSEL'S DEFICIENT PERFORMANCE DEPRIVES A DEFENDANT OF MAKING A CONSCIOUS, INFORMED AND INTELLIGENT DECISION ON WHETHER OR NOT TO ACCEPT OR REJECT A STATE'S PLEA OFFER. SEE LAFLER V. COOPER, 132 S.Ct. 1376, (2012); MISSOURI V. FRYE, 132 S.Ct. 1399, (2012). PETITIONER, WITH THE HELP OF INMATE PARALEGALS, SOUGHT TO, AGAIN, CHALLENGE THE CONSTITUTIONALITY OF HIS CONVICTION, VIA SUBSEQUENT WRIT, RELYING UPON THE TWO BACK-TO-BACK SUPREME COURT

RULINGS OF FRYE AND COOPER, SUPRA. SEE CAUSE NO. 34,787-B: WRIT NO. WR-79,112-02. SINCE THE TRIAL COURT FORWARDED THE WRIT TO THE CCA WITHOUT ANY CONSIDERATION ON THE MERITS, OR ANY DETERMINATION ON WHETHER OR NOT PETITIONER'S CONVICTION WERE OBTAINED IN BREACH OF FEDERAL LAW, AS DETERMINED BY THE UNITED STATES SUPREME COURT, PETITIONER MOVED TO HOLD WRIT IN ABEYANCE, SEND WRIT BACK TO THE LOWER COURT FOR RESOLUTION, AND TO ADDRESS THE CONSTITUTIONAL MERIT OF PETITIONER'S WRIT CLAIMS. THE COURT OF CRIMINAL APPEALS DENIED BOTH THE 'MOTION TO HOLD WRIT IN ABEYANCE', AS WELL AS THE WRIT, ITSELF, ON 7/13/2022, COMPLETELY DISREGARDING SUPREME COURT PRECEDENT.

YOUR PETITIONER MOVED THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, FOR A 'PETITION FOR AUTHORIZATION TO FILE SUCCESSIVE WRIT', IN LIGHT OF SUPREME COURT PRECEDENT THAT GIVES GUIDANCE ON INEFFECTIVE ASSISTANCE OF COUNSEL DURING PLEA BARGAIN PROCESS. THE COURT, ON JULY 28, 2023, CAUSE NO. 23-50519, IN AN UNPUBLISHED ORDER, DENIED PETITIONER LEAVE TO ADVANCE A 'SUCCESSIVE WRIT' TO THE UNITED STATES DISTRICT COURT, EVEN THOUGH PETITIONER ALLEGED THAT HIS CHALLENGE RELIED UPON 'NEW RULES' OF CONSTITUTIONAL LAW AS DETERMINED BY THIS HONORABLE COURT. IN SPITE OF PETITIONER'S CLEAR RELIANCE UPON FRYE AND COOPER, SUPRA, THE UNITED STATES COURT OF APPEALS, IN DENYING P.O.A., CONCLUDED THE RELIANCE UPON FRYE AND COOPER WERE NOT 'NEW LAW' BUT MERE SIXTH AMENDMENT RIGHT TO COUNSEL CLAIM, APPLIED TO A "SPECIFIC FACTUAL CONTEXT." CITING IN RE KING, 697 F.3D 1189, (C.A. 5 - 2012).

BECAUSE YOUR PETITIONER'S CLAIM IS A 'SPECIFIC FACTUAL CONTEXT' SIXTH AMENDMENT BREACH, PETITIONER SEEKS RESOLUTION OF HIS SIXTH AMENDMENT CLAIM, ESTABLISHING THAT HIS CONVICTION WERE OBTAINED IN BREACH OF CONSTITUTIONAL LAW, (6TH AMENDMENT), AS DETERMINED BY THE UNITED STATES SUPREME COURT, FRYE AND COOPER, SUPRA, WARRANTING THIS COURT'S CONSIDERATION. PETITIONER ASSERTS THE WRIT WOULD AID IN THE COURT'S APPELLATE JURISDICTION OVER THESE MATTERS, UNDER EXCEPTIONAL CIRCUMSTANCES, IN THAT, PETITIONER HAS NO OTHER 'ADEQUATE RELIEF' FROM ANY OTHER COURT OR FORM, SAVE FOR THIS COURT'S EXERCISE OF ITS DISCRETIONARY POWERS TO ADDRESS WRIT CLAIMS.

V.

STATEMENT OF THE FACTS

THAT YOUR PETITIONER WAS ACCUSED OF THE OFFENSE OF CAPITAL MURDER, ALLEGED TO HAVE OCCURRED AGAINST THE COMPLAINANT, KEN HILLIARD, ON OR ABOUT OCTOBER 6, 2006, IN HILL COUNTY, TEXAS. PETITIONER PLEADED NOT GUILTY. TRIAL COMMENCED NOVEMBER 17, 2008, BEFORE A JURY. THE JURY FOUND PETITIONER GUILTY OF CAPITAL MURDER, AND SINCE THE STATE DID NOT PURSUE THE DEATH PENALTY, YOUR PETITIONER WAS AUTOMATICALLY SENTENCED TO THE ONLY SENTENCE AVAILABLE, I.E., "LIFE WITHOUT POSSIBILITY OF PAROLE." (R. VII - 12); (TR. - 69).

THE FACTS OF THE CASE ESTABLISHED YOUR PETITIONER AND

THE COMPLAINANT WERE FRIENDS WITH A HISTORY OF 'BUSINESS DEALINGS' WITH EACH OTHER, WHICH INCLUDED VEHICLE TRADES. (R. VI - 55, 56). AN ARGUMENT OF SORTS ENSUED BETWEEN PETITIONER AND THE COMPLAINANT, IN THE PRESENCE OF TWO OTHERS. (R. IV - 48-53). THE COMPLAINANT ACCUSED YOUR PETITIONER OF 'STEALING' FROM HIM, AND THREATENED PETITIONER, STATING, "I AM GOING TO KILL YOU!" (R. VI - 60). EARLIER THAT DATE, THE COMPLAINANT FIRED HIS FIREARM IN THE PRESENCE OF PETITIONER AND THE SAME TWO WITNESSES. (R. IV - 194, 215, 217-239). EVENTUALLY, AFTER THINGS CALMED DOWN, THE TWO (2) WITNESSES LEFT, WHILE PETITIONER STAYED. WHILE IN THE GARAGE AREA OF THE COMPLAINANT'S HOME, ANOTHER HEATED CONVERSATION BREWED UP BETWEEN THE PETITIONER AND THE COMPLAINANT, AND PETITIONER, WHO WAS CLEARLY UNARMED, OBSERVED A FIREARM IN THE WAIST AREA. (R. VI - 65).

ANOTHER ARGUMENT DEVELOPED BETWEEN THE COMPLAINANT AND PETITIONER, WHO, AGAIN, ACCUSED PETITIONER OF 'STEALING' FROM HIM, AND THREATENED TO SHOOT PETITIONER WHILE REACHING FOR HIS GUN. (R. IV - 66). YOUR PETITIONER PICKED UP A CROWBAR THAT WAS NEARBY, IN THE GARAGE, AND KNOWING THE COMPLAINANT WAS REACHING FOR HIS GUN, HIT HIM IN THE HEAD WITH THE CROWBAR, TWICE, CAUSING THE COMPLAINANT TO BLEED IN THE HEAD AREA. (R. VI - 67).

PETITIONER, REALIZING THE COMPLAINANT MAY BE HURT, LEFT THE GARAGE AREA OF THE HOME AND SOUGHT TO CALL 911 FOR MEDICAL HELP FOR THE COMPLAINANT. (R. VI - 70). WHILE IN THE PROCESS OF CALLING 911, PETITIONER OBSERVED A FIREARM ON

THE SHELF, ON THE STAND THE PHONE WAS PLACED. SHORTLY THEREAFTER, THE COMPLAINANT STORMED INTO THE LIVING ROOM AREA OF THE HOME, WHERE PETITIONER WERE, AND THEN TWISTED HIS BODY IN A WAY AS TO TURN AROUND ABRUPTLY, GRABBING THE GUN THAT WERE IN HIS WAIST AREA, AND SHOT PETITIONER. YOUR PETITIONER GRABBED THE GUN, ABRUPTLY, THAT HE OBSERVED ON THE SHELF OF THE STAND THE PHONE WERE ON, AND SHOT IN THE DIRECTION OF THE COMPLAINANT, THEREBY HITTING HIM. THE GUN THE COMPLAINANT HAD IN HIS WAISTBAND AREA, WERE CLEARLY DRAWN ON PETITIONER, AND THE VICTIM WAS OBSERVED, IN A PICTURE, LAYING ON THE GROUND WITH THE GUN THAT HE PULLED ON PETITIONER STILL NEAR HIS HAND. (R. VI - 75, 78). THE BULLET ENTRY WOUND PROVES THE COMPLAINANT WERE IN A TWISTED POSITION, ESTABLISHING THE COMPLAINANT WERE IN THE MOTION OF TWISTING AROUND, WITH THE GUN IN HIS HAND, AS TO SHOOT PETITIONER. THE PATHOLOGIST REPORT ESTABLISHED THE ENTRANCE AND EXIT WOUND PROVES THE COMPLAINANT WAS TWISTING OR TURNING HIS BODY. MOREOVER, THE AUTOPSY REPORT ESTABLISHES THE COMPLAINANT WAS UNDER THE INFLUENCE OF METHAMPHETAMINE AT THE TIME OF HIS DEATH. (R. V - 89). UNDER THE INFLUENCE IS WHAT PROMPTED THE COMPLAINANT'S AGGRESSIVE AND ERRATIC BEHAVIOR TOWARDS PETITIONER.

THE COMPLAINANT HAD PAID PETITIONER CASH FOR A VEHICLE TRADE. PETITIONER LEFT WITH THE MONEY PAID HIM. THE STATE FALSELY NARRATED A 'ROBBERY' OF SORTS, AND HENCE, OPINED THAT THE COMPLAINANT WAS MURDERED AND ROBBED. PETITIONER TURNED HIMSELF IN, AND WAS SUBSEQUENTLY CHARGED WITH THE

OFFENSE OF CAPITAL MURDER. (R. IV - 86). THE STATE HAD INITIALLY DROPPED THE ALLEGED 'ROBBERY' COMPONENT OF THE OFFENSE, AND OFFERED YOUR PETITIONER A PLEA DEAL, STARTING AT THIRTY-FIVE (35) YEARS AND DROPPING TO TWENTY (20) YEARS, THREATENED TO RE-VISIT THE CAPITAL 'COMPONENT' OF THE CHARGE IF PETITIONER INSISTED ON TRIAL. YOUR PETITIONER, WHOLLY RELYING ON ADVICE FROM COUNSEL, WHO STATED STATED TO PETITIONER SPECIFICALLY, 'LET'S GAMBLE', AS HE BELIEVED THE STATE COULD NOT CONVICT ON THE CHARGED OFFENSE, CAUSED PETITIONER TO INVOLUNTARILY, UNKNOWINGLY AND UNINTELLIGENTLY TURN DOWN THE PLEA OFFER FROM THE STATE, WHILE RISKING BEING CONVICTED OF CAPITAL MURDER, A CLEAR DEFICIENT SUGGESTION AND REPRESENTATION. YOUR PETITIONER, DUE TO COUNSEL'S DEFICIENCIES, IS CONFINED FOR THE REST OF HIS NATURAL LIFE.

VI.

REASON FOR GRANT
OF EXTRAORDINARY WRIT OF HABEAS CORPUS

-No Other Remedy For Relief-

YOUR PETITIONER ASSERTS THIS COURT SHOULD EXERCISE ITS DISCRETIONARY AND SUPERVISORY POWERS, OVER THE GRANT OF WRITS, AS YOUR PETITIONER CLEARLY ADVANCED AND ESTABLISHED, IN THE LOWER COURTS, THAT HIS CONVICTION WERE OBTAINED IN BREACH OF THE UNITED STATES CONSTITUTION. SLACK V. McDANIEL, 120 S.Ct. 1595, (2000). MOREOVER, YOUR PETITIONER ASSERTS HIS CONVICTION WERE OBTAINED IN BREACH OF FEDERAL LAW, AS

DETERMINED BY THE UNITED STATES SUPREME COURT. SEE WILLIAMS v. TAYLOR, 120 S.Ct. 1495, (2000). EVEN THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, IN DENYING PETITIONER RELIEF, STATED THAT PETITIONER DID NOT ANNOUNCE NEW RULES OF CONSTITUTIONAL LAW BECAUSE "THEY MERELY APPLIED THE **SIXTH AMENDMENT** RIGHT OF COUNSEL TO A SPECIFIC FACTUAL CONTEXT." (SEE PAGE 2 OF COURT OF APPEAL RESPONSE, ANNEXED HERETO AS APPENDIX). CONSEQUENTLY, THE LOWER COURT, ALONG WITH THE STATE COURT, REFUSED TO ADDRESS THE CONSTITUTIONAL MERIT OF PETITIONER'S CLAIM, UNDER THE CLOAK OF 'No NEW RULE', INSTEAD OF DETERMINING WHETHER OR NOT PETITIONER'S CONVICTION WERE OBTAINED IN BREACH OF THE 6TH AND 14TH AMENDMENT GUARANTEE. IN ADDITION, THE TRIAL COURT, AND BY EXTENSION, THE TEXAS COURT OF CRIMINAL APPEALS, DENIED PETITIONER WRIT RELIEF, SOLELY BECAUSE THE WRIT WERE 'SUCCESSIVE', AND REFUSED TO ADDRESS THE MERITS OF PETITIONER'S WRIT CLAIMS. THIS WRIT WOULD BE IN AID OF THE COURT'S APPELLATE JURISDICTION OVER WRITS, AND THAT EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURT'S DISCRETIONARY POWERS, AS WRIT RELIEF, ON A CLEAR 6TH AMENDMENT BREACH, CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT, AS THE LOWER COURTS DENIED RELIEF, NOT ON THE MERIT, BUT ON PROCEDURAL GROUNDS. (RULE 20.1, SUPRA). PETITIONER CANNOT OBTAIN RELIEF IN THE UNITED STATES DISTRICT COURTS, UNITED STATES COURT OF APPEALS, OR THE STATE COURT, AS PETITIONER SOUGHT TO EXHAUST HIS REMEDIES THROUGH SAID COURTS, BUT WERE DENIED ON PROCEDURAL GROUNDS, AND NOT THE CONSTITUTIONAL

MERITS OF HIS CLAIM ON WHETHER OR NOT COUNSEL'S DEFICIENT PERFORMANCE, PREJUDICED PETITIONER'S RIGHTS, RESULTING INTO YOUR PETITIONER SUFFERING 'LIFE WITHOUT PAROLE'. PETITIONER WILL DIE IN PRISON WITHOUT THIS COURT'S EXERCISE OF ITS DISCRETIONARY AND SUPERVISORY POWER TO GRANT WRITS, TO ADDRESS CONSTITUTIONAL VIOLATIONS THAT RESULTED INTO WRONGFUL CONVICTIONS.

VII.

POINT OF ERROR NUMBER ONE

TRIAL COUNSEL RENDERED UNREASONABLE, INEFFECTIVE ASSISTANCE OF COUNSEL FOR OMITTING TO EXPLAIN AND ADVISE PETITIONER OF THE UNDUE RISK IN FOREGOING THE STATE'S PLEA OFFER OF 20 YEARS, AND GOING TO TRIAL ON CAPITAL MURDER OFFENSE

ARGUMENTS, AUTHORITIES AND DISCUSSIONS

THAT THIS COURT HAS LONG RECOGNIZED AN ACCUSED IS ENTITLED TO 'EFFECTIVE' ASSISTANCE OF COUNSEL DURING THE PLEA BARGAINING PROCESS. SEE LAFLER V. COOPER, 132 S.Ct 1376, (2012); MISSOURI V. FRYE, 132 S.Ct. 1399, (2012).

MOREOVER, THIS COURT HAS DETERMINED THAT A STATE PRISON INMATE, BASED ON THE ERRONEOUS LEGAL ADVICE OF COUNSEL, REJECTS A PLEA BARGAIN, AND WAS SUBSEQUENTLY CONVICTED AT TRIAL AND RECEIVED A MUCH GREATER SENTENCE THAN OFFERED IN THE PLEA BARGAIN, SUFFERED THE "EFFECTIVE" ASSISTANCE OF COUNSEL. (ID). IN ADDITION, THIS COURT RULED THAT THE 'RELIABILITY' OF THE PRE-TRIAL BARGAINING, WHICH CAUSED THE INMATE TO LOSE THE BENEFIT OF THE BARGAIN, IS THE MAJOR CONCERN AT ISSUE. (ID). UNDER THESE CIRCUMSTANCES, THE APPROPRIATE REMEDY FOR COUNSEL'S ERROR WAS TO RE-OFFER THE PLEA BARGAIN AND CONDUCT FURTHER PROCEEDINGS IN STATE COURT, RATHER THAN DIRECTING THAT THE PLEA BARGAIN BE ENFORCED. YOUR PETITIONER IS NOT SEEKING THE ENFORCEMENT OF THE MISSED PLEA OFFER, AS A RESULT OF COUNSEL'S ILL-ADVICE. INSTEAD, YOUR PETITIONER SEEKS THE SAME REMEDIAL ACTION, ENVISIONED BY THIS COURT, AND NOT ENFORCEMENT OF THE PLEA. THE REMEDY ENVISIONED BY THIS HONORABLE COURT IS TO RE-PLACE YOUR PETITION IN THE SAME PLACE AND TIME IN WHICH THE PLEA BARGAIN WAS OFFERED. SEE LAFLER V. COOPER, SUPRA.

IN THE CASE AT BAR, YOUR PETITIONER WAS OFFERED THIRTY-FIVE (35) YEARS, THEN TWENTY-FIVE (25) YEARS, AND AS A FINAL OFFER, TWENTY (20) YEARS, AS A PLEA BARGAIN OFFER. THE STATE DID WARN, HOWEVER, IF THE PLEA OFFER WAS REJECTED, THEY WOULD RE-VISIT THE CAPITAL MURDER COMPONENT OF THE OFFENSE. COUNSEL, FULLY COGNIZANT OF THE STATE'S OFFER AND ITS THREAT TO RE-VISIT THE CAPITAL MURDER CHARGE, CLEARLY ADVISED PETITIONER AGAINST THE PLEA BARGAIN, STATING THAT HE

FEEL LIKE GAMBLING, WHILE PERSUADING PETITIONER TO JOIN ON WITH HIM IN 'GAMBLING' WITH THE STATE, FULLY BELIEVING THE EVIDENCE IS NOT SUFFICIENT TO OBTAIN A CONVICTION. YOUR PETITIONER, WHOLLY OBLIVIOUS OF THE LAW AND ITS CONSEQUENCES DECIDED TO FOLLOW COUNSEL'S LEAD AND ADVICE, AND REJECTED THE FINAL PLEA BARGAIN OFFER OF TWENTY (20) YEARS, SOLELY DUE TO COUNSEL'S ILL-ADVICE. COUNSEL'S 'GAMBLE' PROVED COSTLY, RESULTING INTO YOUR PETITIONER RECEIVING A FAR GREATER SENTENCE THAN WHAT WAS OFFERED DURING THE INITIAL PLEA BARGAIN PROCEEDINGS. PETITIONER RECEIVED THE SECOND MOST EXTREME PUNISHMENT THE STATE OF TEXAS HAD TO OFFER, I.E., "LIFE WITHOUT PAROLE." COUNSEL, WHOSE TASK IS TO RENDER 'ASSISTANCE' TO HIS CLIENT'S 'DEFENSE', KNEW OR SHOULD HAVE KNOWN THAT THE 6TH AMENDMENT GUARANTEE, AND THE REQUIRED 'EFFECTIVE' REPRESENTATION, ENVISIONED BY THE 6TH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND THIS COURT'S PRECEDENTS, REQUIRED FULLY ADVISING PETITIONER OF ALL ASPECTS. IT WAS AN UNDUE 'GAMBLE' WITH A CAPITAL MURDER CONVICTION, WHEN THE CAPITAL COMPONENT WAS TAKEN OFF THE TABLE, LEAVING PETITIONER THE CHANCE TO ACCEPT THE NON-CAPITAL CONVICTION OF TWENTY (20) YEARS. THE LOWER COURTS DEPRIVED PETITIONER OF THE FAIR AND JUST OPPORTUNITY TO CONFRONT COUNSEL TO DETERMINE THE 'WHY' BEHIND HIS DEFICIENT PERFORMANCE AND ERRONEOUS ADVICE, WHICH COSTED YOUR PETITIONER THE REST OF HIS LIFE IN PRISON, WITH NO HOPE OF PAROLE. NO ATTORNEY, WORTH HIS SALT, WOULD HAVE SO ADVISED THEIR CLIENT, REALIZING THE TREMENDOUS AND DIRE

CONSEQUENCE OF A CONVICTION. PETITIONER WAS WHOLLY UNAWARE OF THE BENEFITS OF HAVING THE STATE WAIVE CAPITAL MURDER, IN EXCHANGE FOR A TWENTY (20) YEAR OFFER. PETITIONER, HAVING BLIND FAITH IN COUNSEL'S ILL ADVICE, AND HIS SICK HABITS OF 'GAMBLING', WAS WHOLLY UNAWARE OF THE DIRE CONSEQUENCES OF TRIAL AND THE SUBSEQUENT PUNISHMENT THAT FOLLOWED. AT NO TIME DID COUNSEL ADVISE PETITIONER ON THE BENEFITS OF THE PLEA OFFER PROFFERED BY THE STATE. INSTEAD, COUNSEL, IN CLEAR BREACH OF THE 6TH AMENDMENT GUARANTEE, 'ENCOURAGED' "GAMBLING" AGAINST THE STATE.

YOUR PETITIONER ASSERTS HAD HE KNOWN OF THE DIRE CONSEQUENCES OF 'GAMBLING' WITH THE STATE, AND REALIZED THE BENEFIT OF THE OFFER RENDERED BY THE STATE, HE WOULD HAVE NEVER PROCEEDED TO TRIAL, BUT WOULD HAVE INSISTED ON ACCEPTING THE PLEA OFFER. SEE RATIONALE OF HILL v. LOCKHART, 105 S.Ct. 833, (1985); STRICKLAND v. WASHINGTON, 104 S.Ct. 2052, (1984). SEE ALSO Ex PARTE LEMKE, 13 S.W. 3d 791, (Tx. Cr. App. 2000); Ex PARTE WILSON, 724 S.W. 2d 72, (Tex. Cr. App. 1987), AND ITS PROGENY.

COUNSEL, WHO WILL CONCEDE TO ERROR, SPECIFICALLY AND POINTEDLY ADVISED PETITIONER, "LET'S GAMBLE!" SAID ADVICE DEPRIVED YOUR PETITIONER FROM MAKING A CONSCIOUS, VOLUNTARY AND INFORMED WAIVER OF THE PLEA OFFER. COUNSEL WAS CLEARLY NOT FUNCTIONING WITHIN THE WIDE RANGE OF COMPETENCE, DEMANDED OF ATTORNEYS DURING CRIMINAL CASES. THE TRIAL COURT, AS WELL AS STATE COUNSEL, WERE ALL IN AGREEMENT OF THE PLEA OFFER. PETITIONER WOULD HAVE EXCITEDLY ACCEPTED

THE PLEA OFFER, HAD HE RECEIVED 'EFFECTIVE' ADVICE AND ASSISTANCE DURING THIS CRITICAL STAGE OF TRIAL. ITS CLEAR THE PROSECUTOR WOULD NOT HAVE WITHDRAWN FROM THE PLEA OFFER, AS IT WAS THE STATE WHO WERE INSISTENT ON THE PLEA DEAL, DROPPING THE 'CAPITAL' COMPONENT OF THE CASE, AND DROPPING ITS INITIAL OFFER FROM 35 YEARS TO 20 YEARS. SINCE THE TRIAL COURT WAS COGNIZANT OF THE STATE'S OFFER AND EFFORTS, THERE IS NO EVIDENCE THE COURT WOULD HAVE NOT ACCEPTED THE PLEA OFFER AS WELL. SEE Ex PARTE ARGENT, 393 S.W. 3d 781, (Tex. Cr. App. 2013); Ex PARTE LEMKE, SUPRA; Ex PARTE WILSON, SUPRA.

NO ATTORNEY, RENDERING 'EFFECTIVE' ASSISTANCE, WOULD ADVISE THEIR CLIENT TO FOREGO A 20-YEAR OFFER, AND FACE DOWN THE RISK OF A CAPITAL MURDER CONVICTION, IF SUCH AN OFFER WAS REJECTED. IN ADDITION, THE UNITED STATES SUPREME COURT NOTED THAT PREVAILING NORMS OF PRACTICE ARE REFLECTED IN THE AMERICAN BAR ASSOCIATION STANDARD AND THE LIKE ARE [GUIDES] FOR EVALUATING THE REASONABLENESS OF THE REPRESENTATION UNDER THE CIRCUMSTANCES OF THE INDIVIDUAL CASES. STRICKLAND 104 S.Ct. at 2065. THESE AUTHORITIES INCLUDES:

"A DEFENSE LAWYER IN A CRIMINAL CASE HAS THE DUTY TO ADVISE HIS CLIENT FULLY ON WHETHER A PARTICULAR PLEA TO A CHARGE APPEARS TO BE DESIRABLE AND AS TO THE PROSPECTS OF SUCCESS ON APPEAL. SEE ETHICAL CONSIDERATION 7-7. IN ADDITION, 7-8 PROVIDES IN PERTINENT PARTS: A LAWYER SHOULD EXERT HIS BEST EFFORTS TO INSURE THAT DECISIONS OF HIS CLIENT ARE MADE ONLY AFTER THE CLIENT HAS BEEN INFORMED OF ALL RELEVANT CONSIDERATION."

AT NO TIME DID COUNSEL COMPORT WITH ETHICAL CONSIDERATION

7-7 AND 7-8, BY EXERCISING HIS BEST EFFORTS TO EXPLAIN ALL RELEVANT CONSIDERATIONS IN TURNING DOWN A PLEA OFFER, NOR DID COUNSEL EVER EXPLAIN WHETHER OR NOT THE PARTICULAR PLEA "APPEARS TO BE DESIREABLE." YOUR PETITIONER, A LAYMAN AT LAW, AND RELIANT UPON 'EFFECTIVE' REPRESENTATION FROM COUNSEL, ASSERTS COUNSEL WHOLLY BREACHED HIS DUTY TO ADVISE AND INFORM, AS DEMANDED IN Ex PARTE WILSON, SUPRA. PETITIONER'S 6TH AMENDMENT ARGUMENT AND DEFICIENT PERFORMANCE CLAIM BY TRIAL COUNSEL, WHOSE ILL ADVICE DEPRIVED PETITIONER OF BENEFITS OFFERED HIM BY THE STATE, IS IN CLEAR VIOLATION OF THIS COURT'S BACK-TO-BACK PRECEDENTS IN FRYE AND COOPER, SUPRA; U.S.C.A., AMEND. 6; 14. CONSEQUENTLY, YOUR PETITIONER ASSERTS HIS CONVICTION WAS OBTAINED IN BREACH OF FEDERAL LAW, AS DETERMINED BY THE UNITED STATES SUPREME COURT, AND THE UNITED STATES CONSTITUTION, WARRANTING THIS COURT'S EXERCISE OF ITS DISCRETIONARY AND SUPERVISORY POWERS OVER WRIT PROCEEDINGS. SEE SLACK v. McDANIEL, SUPRA; WILLIAM v. TAYLOR, SUPRA. PETITIONER HAS NO OTHER REMEDY, NO OTHER FORM, AND NO OTHER COURT TO SEEK JUSTICE AGAINST A CLEAR CONSTITUTIONAL BREACH, AND THIS COURT IS ACCORDED THE POWER TO RESOLVE SAID WRIT ISSUE, PURSUANT TO RULE 20, ET.AL., RULES OF THE SUPREME COURT.

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, YOUR PETITIONER PRAYS AND RESPECTFULLY URGE OF THIS COURT TO EXERCISE ITS DISCRETIONARY AND SUPERVISORY

POWERS, OVER WRIT MATTERS, AND DETERMINE DUE PROCESS AND THE INTEREST OF JUSTICE WARRANTS THE COURT'S INTERVENTION TO ALTER PETITIONER'S DIRE CIRCUMSTANCE OF 'LIFE WITHOUT PAROLE', AFFLICTED UPON HIM SOLELY AS A RESULT OF COUNSEL'S DESIRE TO 'GAMBLE' AND CLEAR BREACH OF HIS DUTY TO RENDER "EFFECTIVE" 'ASSISTANCE' TO HIS CLIENT'S 'DEFENSE', AS IT RELATE TO PRE-TRIAL PLEA OFFERS. PETITIONER PRAYS THIS COURT WOULD REMAND THE CASE BACK TO THE LOWER COURTS FOR RESOLUTION. PETITIONER PRAYS FOR AN EVIDENTIARY HEARING ON THE MERITS, AS SAID CLAIMS, IF TRUE, CLEARLY WARRANTS HABEAS CORPUS RELIEF. ALTERNATIVELY, YOUR PETITIONER PRAYS FOR WHATEVER OTHER, FURTHER OR DIFFERENT RELIEF THIS COURT DEEM IS JUST AND PROPER, TO ALTER A FUNDAMENTAL MISCARRIAGE OF JUSTICE AND CONSTITUTIONAL PROTECTION. IT IS SO PRAYED FOR.

RESPECTFULLY SUBMITTED,



ROGER LARRY MCCLURE
PETITIONER, PRO SE
TDCJ #1839918
MEMORIAL UNIT
59 DARRINGTON Rd.
ROSHARON, Tx. 77583