No. 25-6120

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

In Re STEVEN MICHAEL BACKSTROM
(Your Name)

NO COURT HAS EVER RULED ON THE MERITS OF THE CASE
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

STEVEN MICHAEL BACKSTROM
(Your Name)

9601 SPUR 591
(Address)

AMARILLO, TEXAS &(!)&
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. a) Does a failure by trial counsel to investigate known-to-be material facts and/or witnesses, constitute federally defined ineffective assistance of counsel? If so, b) would the submission of a sworn affidavit in defense of ineffective assistance of counsel allegations in habeas corpus, rife with material misrepresentations of material fact constitue an admission by conduct? If so, has any federal right been violated?

2. Was Relator deprived of his Fourteenth Amendment right to due process where his trial was a platform for material perjury?

3. Does a cumulated sentence contrary to state law constitute cruel and unusual punishment as defined within the Eighth Amendment of the U.S. Constitution?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] 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:

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

STEVEN MICHAEL BACKSTROM

RELATED CASES

INEFFECTIVE ASSISTANCE OF COUNSEL:
Strickland V. Washington, 466 U.S. 668 (1984)

FAILURE TO INVESTIGATE
Wiggins V. Smith, 539 U.S. 510 (2003)

ADMISSION BY CONDUCT
Ziang Sung Wan, 1924 U.S. LEXIS 3022

PERJURY/FALSE EVIDENCE
Napue V. Illinois, 360 U.S. 264 (1954)

ACTUAL INNOCENCE
McQuiggins V. Perkins, 569 U.S. 383 (2013)

CUMULATED SENTENCE
Rosales-Mireless, 585 U.S. 129 (2018)

TABLE OF AUTHORITIES CITED

SEE NEXT PAGE

OTHER

CIRCUIT/DISTRICT COURT

TEXAS CASE LAW

TEXAS STATUTORY AUTHORITY

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix 36 the petition and is

[XX] reported at IN RE BACKSTROM, 2025 U.S.App LEXIS 18070 or, ——— to

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix 3 the petition and is

[XX] reported at Backstrom V. Davis, 2016 U.S. Dist. LEXIS 112841; or, ——— to

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix 1 & 2 to the petition and is

[ ] reported at WR-76,281-02; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was No. 18-50663/9/18/2018; No. 25-50468

[ ] 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: 8/12/2025, and a copy of the order denying rehearing appears at Appendix 37.

[ ] 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).

**SEE ATTACHED CITATIONS OF OFFICIAL REPORTS

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

The date on which the highest state court decided my case was 11/20/2012. A copy of that decision appears at Appendix 1.

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

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

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

*NOTE: Two suggestions for reconsideration were filed in the C.C.A., both axiomaticallydenied, the later denied on 10/14/2022. There has been three actual innocence writs filed, each denied w/o order.

CITATIONS OF OFFICIAL REPORTE AND?OR ORDERS

State court:

a. Trial court's findings and conclusions (writ 35498-B), Attachment 1;

b. Texas Court of Criminal Appeal's (C.C.A.) remand order. See Ex parte Backstrom, 2012 Tex.Crim.App. Unpub. LEXIS 614;

c. C.C.A.'s WR-76,281-02 denial;

d. Texas Court of Appeal's (C.O.A.) mandamus mandate, Backstrom V. State, 2020 Tex.App. LEXIS 2194 (Unpub.);

e. C.O.A.'s reconsideration denial. See In re Backstrom, 2023 Tex. App. LEXIS 4611 and 8018.

U.S. District Court

f. Relator's first timely-filed writ of habeas corpus into the Western District Court (1:13-cv-00037-LY);

g. Relator's order re: his actual innocence application, Backstrom V. Davis, 2016 U.S. Dist. LEXIS 111841;

h. Relator's 60(b)(3)(d)(3) motion (1:21-cv-574-LY);

i. Relator's 60(b)(6) motion (1:13-cv-037-LY).

Circuit Court

j. Relator's first request to reenter federal habeas corpus, no. 18-50663: Attachment 8;

k. Relator's 60(b)(6) appeal: no. 21-50880, Attachment 9;

l. Relator's second request to reenter federal habeas corpus, no. 22-51056; Attachment 10;

m. Relator's third request to reenter federal habeas corpus, no. 25-50468; Attachment 36.

CITATIONS CONTINUED

Supreme Court

n. Backstrom V. Texas, 577 U.S. 1147 (2016), Relator's first High Court appeal;

o. In re Backstrom, 587 U.S. 1062, Relator's COA appeal;

p. In re Backstrom, 2024 U.S. LEXIS 2398, Relator's writ of habeas corpus - denied;

q. Relator's second writ application; enclosed.

Relator is currently illegally incarcerated in the State of Texas pursuant to his conviction out of the 33rd Judicial District Court in Burnet County Texas.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

"In all criminal prosecutions, the accused shall enjoy the right ... to have the [effective] assistance of counsel for his defense."

United States Constitution, Amendment XIV:

"No State shall deprive any person of life, liberty, or property without due process of law..."

United States Constitution, Amendment VIII:

"excessive ... nor cruel and unusual punishment inflicted."

STATEMENT OF THE CASE
Rule 20 Statement

This case involves a state habeas corpus pleading which garnered evidence of inequitable conduct which amounts to an admission by conduct (newly discovered as defined by federal law) by trial counsel to ineffective assistance of counsel habeas claims which in turn revealed evidence of actual innocence; repeatedly presented to both state and federal courts to no avail. This case also involves an improperly cumulated sentence, also presented to the state courts, to no avail.

In short, State post-conviction habeas corpus (infirmity) garnered newly discovered evidence proving constitutional ineffectiveness by counsel and demonstrating Relator's actual innocence, or, in federal habeas corpus terms: no rational factfinder would have voted for quiltybut for trial counsel's constitutional ineffectiveness.

REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT

The fifth Circuit has repeatedly denied access to the U.S. Discrict Court based on post-conviction infirmities as having no recourse in federal habeas corpus. No.: 25-50468 (example).
All of this is addressed ahead.

REASONS FOR GRANTING THE PETITION

All of the matters herein have been adjudicated resulting in a decision that is unreasonable in light of the evidence presented to the courts; the issues presented will aid the Court's appellate jurisdiction: and, given the facts and circumstances behind the Court's decisions, justice cannot be found in any other court or forum.
As it stands today, Relator is illegally restrained from his liberty and held pursuant to his conviction out of the 33rd District Court, Burnet County, Texas, by the Director of TDCJ-Institutional Division at the Clements Unit, 9601 Spur 591, Amarillo, Potter County, Texas 79107.

IN THE SUPREME COURT
OF THE UNITED STATES

IN RE STEVEN MICHAEL BACKSTROM, RELATOR

ON PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUSTICES OF SAID COURT:

NOW INTO COURT comes STEVEN MICHAEL BACKSTROM, Relator pro se with his Petition For Writ Of Habeas Corpus and inso would respectfully show the following:

I. APPELLATE POSTURE (in pertinent part)

Relator's first state writ was denined as untimely; however, his second application netted a paper hearing where trial counsel was ordered to defend allegations of ineffective assistance of counsel (IAC) which became the basis of the trial court's findings, Attachment 1. The Texas Court of Criminal Appeals (C.C.A.) denied relief, Attachment 2. Since that denial, Relator has filed three (3) actual-innocence writs as well as two (2) suggestions for reconsiderations and a CH 52 petition seeking an investigation by the trial court into allegations of fraud on the state court - all denied in some fashion or another.

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[1] Relator no longer has a copy of his exhibits due to numerous pleadings; however, the Court has a copy within its files, see In re Backstrom, 2024 U.S. LEXIS 2398; Case no. 23-7420. those appendices were incorporated as attachments numbered 1-37. This writ application incorporates the same numerical order. relator has asked the Clerk of the Court to simply transfer the 23-7420 exhibits behing Relator's memorandum in the same order as previously submitted.

District Court Pleadings

Relator voluntarily withdrew his first timely-filed federal habeas application, no. 1:13-cv-00037, to file a state actual innocence writ. Upon the state denial, Relator moved back into federal habeas corpus, see Backstrom V. Davis, 2016 U.S. Dist. LEXIS 112841 (unpb). The Magistrate cited a "glaring flaw": Relator's punishment phase confession and his failure to address it in his application, -Id at *8; thus, denying relief with prejudice as time-barred without addressing the merits. Relator submitted affidavits from persons privy to this "confession" as a counsel-driven strategy to elicit probation from the jury, Attachment 3. That evidence arrived at the federal courthouse on the fifthand nineth day after Relayor's rejoinder but the Judge denied relief on the fourth day, never seeing the evidence. 60(b) motion was filed to no avail. Relator has also filed two additional 60(b) motions: 60(b)(3)(d)(3) and 60(b)(6), each to no avail, see Attachment 4.

Circuit Court Pleadings

Relator failed to obtain COA, Attachment 8; however,he attempted to reenter federal habeas corpus under §2244(b)(2)(B)(ii), to no avail, see e.g., Attachment 9; In re Backstrom, 2025 U.S. App. LEXIS 18070. Relator argued there as he argues her, but the Circuit court refused to differentiate Relator's evidence from his claims and because so, denied relief, Attachment 36 and petition for rehearing failed.

II. STATEMENT OF ISSUES PRESENTED

There are three (3) issues proffered: (1)(a) Relator's conviction is the product of constitutional ineffectiveness by counsel at the guilt/innocence phase of trial, (b) in defense of Relator's IAC charges, counsel submitted a materially false affidavit, (c) known to Relator but unprovable at the time due to insufficient evidence, and (d) now with overwhelming evidence in hand, no court will hear the facts; (2) there was no lack of material perjury in trial, and (3) Relator was issued an improperly cumulated sentence.

III. ARGUMENT AND AUTHORITY

Question one: Does a failure by trial counsel to investigate known-to-be material facts and/or witnesses constitute federally defined IAC? If so, would the submission of a known-to-be false affidavit onto a habeas tribunal constitute an admission by conduct? If so, has any federal right been violated?

IAC Standards

To prevail here, Relator must meet the two-pronged test set out in Strickland V. Washington, 466 U.S. 668 (1984). 1) he must show that his trial counsel's representation fell below an objective standard of reasonableness under prevailing norms, -Id at 690, while overcoming a strong presumption of reasonableness, Burt V. Titlow, 571 U.S. 12 (2013). And (2) prejudice must be established: a reasonable probability that minus the deficient performance the outcome of the trial would have differed, 466 U.S. 668 at 694.

Relator accused counsel (Mr. Shell) of failing to investigate known, material facts/witnesses; more precisely: he failed to

move to prevent the suppression of known material impeachment evidence; thus, preventing Mr. Shell from inpeaching a State's key witness; he failed to interview known, material fact witnesses and failed to present a promised witness. Mr. Shell, due to gross ignorance, was forced to exit the guilt/innocence phase of the trial without presenting any facts or witnesses or defense where all of the above existed.

Failure to investigate

"Specific choices made after a thourough investigation of law and facts to plausible options are virtually unchallengeable." Strickland, 466 U.S. 668 at 690; however, when making strategic decisions, counsel's conduct must be reasonable, Roe V. Flores-Ortega, 528 U.S. 470,481 (2000)." "Counsel has a duty to make reasonable decisions that make particular investigations unnecessary," -Id at 690-91. The focus then is the reasonableness of the investigation, if any. Wiggins V. Smith, 539 U.S. 510,527 (2003).

Relator's first two claims surround believed-to-be illicit email communique between the State's outcry witness, Ms. Castillo and Relator's minor son, 16 years old at the time, see Attachment 5: P. 2:dated Jan. 14, 2008; Tex.P.Code §43.24: sale, display, or distrobution of harmful material to a minor. The State filed a motion in lemine to suppress the emails, instead of arguing to prevent the suppression, counsel simply sat down with no substantive argument.

> "My name id EDDIE G. SHELL,...and the facts stated in this affidavit are within my personal knowledge and are true and correct." Attachment 6:P. 1

Mr. Shell averred within his sworn affidavit that he didn't believe that the "writings" offered all that much for the defense; he averred that the "writings" were sexual in nature (clue #1), Attachment 6: Item C, excerpts from a novel (authored by Ms. Castillo) and that he advised Relator not to submit them to CPS. Mr. Shell went on to state that to the best of his memory he cross-examined Ms. Castillo in trial about the writings and that he didn't want any long-speaking objections at that point in the trial and that he didn't believe the judge would have admitted the evidence; however, that he cross-examined Ms. Castillo sufficiently, -Id. Mr. Shell broached the subject again, P. 5:last par, outlining that the State filed a motion in lemine to exclude the writings and had Movant followed his "advise" by not submitting them, P. 6, he would have "most likely" been successful at getting the documents in at trial. This rendition is a lesson in contrasts.

Mr. Shell twice stated that he cross-examined Ms. Castillo but the record is silent as to any such examinations; thus, his failure to impeach Ms. Castillo. After the State's initial salvo to suppress, there were no substantive discussions on the subject.

Mr. Shell's excuse regarding "long-speaking" objections is nonsensical because at that point in the trial, it was the first order of business on day-one, Attachment 7: Pp. 4-7.

As to whether the emails would have been admitted, the Judge certainly thought the matter convoluted enough to review the matter outside the presence of the jury, Attachment 7:P. 5, (clue #2).

The Judge never saw this evidence. As to Mr. Shell's "advise." see Attachment 11: dated Aug. 1, 2009 explaining to Mr. Shell that Relator had discovered the emails, made a police report, contacted the National Center for Missing And Exploited Children (NCMEC), Attachment 12, and made an e-complainant to CPS, all before informing Mr. Shell of the emails. Mr. Shell never advised Relator about anything[.]

Although voluninous, the emails between Ms. Castillo and Relator's son (Kris) clearly demonstrates intentional grooming by Castillo (clue #3), then a seduction (clue #4) upon one she knew to be a minor (clue #5) which appealed to his pruient interest (clue #6), see Attachment 13(a),(b).

Prejudice

Harm presents in three ways: 1) as Attachment 12 demonstrates, NCMEC's Sr. Analyst, Mr. Kevin O'Brien, remotely entered Ms. Castillo's computer to the extent federal law allowes. In doing so he discovered "[u]nknown additional victims," P. 3, and "CHILD EROTICA," P. 5.

2) Ms. Castillo created a statement for police, Attachment 14, and an interview was conducted by police, Attachment 15[1]. On P.3: par 3 of Attachment 14, Ms. Castillo referenced herself as having been twice raped where "no one believed [her]" when she reported them. Had Mr. Shell investigated he would have discovered no evidence exists to support this claim and he knew to do so - discussed ahead.

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[2] All referenced and incorporated transcribed evidence was transcribed by Mr. Shell, Attachment 6:P. 2.

3) Within Attachment 14, Ms. Castillo stated that she told complainant (Della) that she had two choices with her being the only person capable of that decision: she could report it or NOT, P. 3. See also Attachment 15: P. 4:sentences 11 & 12. Now see sentence 15 where CASA "crawled" all over her for having told Della. Revisiting Attachment 14:P. 4:par 2, Ms. Castillo then told Della that if she [Della] didn't outcry, she [Castillo] "would" get into trouble. Mr. Shell failed to investigate the report/statement, of which he knew to do so for that reason specifically, preventing him from impeaching the integrity of the State's case in the eyes of the jury for multiple false statements - to police and Della - which in turn placed Della under duress to outcry.

Relator also accused Mr. Shell of failing to interview known material fact witnesses, chief among them was (Lori) Halbert.

Lori was a friend of Relator's who had a close relationship with all of the principles named and yet to be named. Lori accompanied Relator to Mr. Shell's office twice, once when Relator hired him and a year later when invited to discuss sentencing parameters with Jennifer, Mr. Shell's assistant.

With respect to Lori, Mr. Shell defended himself, Attachment 6: Pp. 4-6, stateing that his office "communicated" with Lori, she was "talked to" in person, by phone and by email on numerous occasions. While in jail, Lori acted as Relator's intermediary. There are numerous emails between Lori and Jennifer, Attachment 16, initiated by Lori discussing minor details mostly: general questions and witness information; however, some issues of import

were discussed: Lori's inquiry about testifying for the defense, i.e., an interview, Pp. 4-6, her witness list (seperated as Attachment 17) and her attempts to get Mr. Shell to communicate with Relator, Pp. 4-6,9,10 & 12. See Attachment 18: V4:Pp. 45-47:

Q: Just real quickly Ms. Halbert, have you and I ever spoke?
A: No.
Q: You and I never spoke?
A: Correct.

Redirect Examination

Q: ... who did you send the emails to?
A: To Jennifer, Shell's assistant.

Redirect Cross-Examination

Q: ... did you ever come into our office for an interview?
A: No.

Lori and Movant made clear to Mr. Shell's office that Kris Backstrom's input in this case was paramount. Kris was never interviewed, Attachment 13b.

Prejudice

During Della's police interview she stated that she had been raped in the local park (three versions), Attachment 19. At trial, when confronted about this lie, she told the jury that Relator had told her to lie, Attachment 20: V8:P. 163.
Kris knew this would play a part in the trial and a pretrial interview would have revealed that Della told Kris about this "rape" in mid 2006 making it impossible for Movant to have told her to lie to police about a rape to occur 1½ years in the future, Attachment 21a & b.

Mr. Shell did not interview Della; therefore, any post-Della

testimonial interview would have been granted for any of the defense witnesses for rebuttal purposes; thus, the jury would have learned of Della's many lies and a propencity to do so without compunction. See Attachment 15:P. 3:LL. 16-18; P. 4:LL. 16-19. See Attachment 22, demonstrating her outcry was a blatant lie. See also Attachment 6:P. 5 regarding Ms. Untermeyer.

Della also attested that Movant raped her in December of '07, Attachment 23: V8:P. 164 and from then forward, she and Relator had a bad relationship, Attachment 24: V8:P. 212. Now see Attachment 25: note the date and title: "That is my Best friend," a statement hardly indicative of a bad relationship. Any post-testimonial interview with Kris (or Lori) would have shown Della in a different light; impeaching the integrity of the State's case.

Attachment 6:P. 3:

> "Being aware of any information in the possession of [Relator], I was aware of any information that [Relator] shared with me." -Id at Item C.

Pp. 4,5: F:

> "[Relator] had instructed my office to interview the following witnesses:
> a. Stephanie and Coy Guenther
> b. Stephanie Idell. -Id at P. 5

par. 2:

> "These are the only witnesses that [Relator] asked me to interview."

Now see Attachment 17: Lori's witness list to Mr. Shell. That document was the only reference to either the Guenthers or Ms. Idell. Note that Attachment 17 contains five names, not the three Mr. Shell purported. Note also the syntax of Lori's document.

Now armed with the knowledge that Mr. Shell was aware of information that Relator shared with him, see Attachment 26: letters to Mr. Shell from Movant while he was in jail. See 26(a): numerous attempts to call Mr. Shell's office to no avail and evidence of import needing to be discussed and videos needing to be viewed; P. 4: mentioning Dr. Thomas for interview; Item 8: naming Ms. Campbell, Della's math teacher, SPECIFICALLY MELISSA: her as the PTA president while emailing obscenity to minors (2 schools); also mentioning how Castillo didn't give Della any choice but to outcry; 26(e): mentioning the need to view discovery DVDs; 26(d): mentioning Dr. Thomas again and her call to CPS; P. 2, mentioning Castillo's two rapes with no reports; Item 5: Dr. Thomas again; and Item 13: Ms. Campbell again.

Clearly Mr. Shell was aware of several defense witnesses of import; however, Mr. Shell neither discussed this with Relator nor did he interview any of them.

Relator also accused Mr. Shell in his failure to present a promised witness(es): Ms. Judy Tull and/or Ms. Suzy Sims, Della's Pastors, Attachment 27: V3:P. 24. In response, Mr. Shell stated that his "office attempted to interview the pastors and Tull ... but they were not cooperative." -Id at P. 5:par 2; this of course begs the question: if they were "uncooperative," why did Mr. Shell offer them as witnesses, or, was Mr. Shell prepared to offer an uncooperative witness for the defense? After the State rested, Relator insisted Mr. Shell put the pastors on the stand due to their vast knowledge of Della's family and her upbringing. Mr Shell called Ms. Tull (only) who couldn't make it due to her

being on oxygen and having been notified on short notice (Friday afternoon), however, she could attend on Monday, 2½ days away (subpoenas were issued), Attachment 28. Mr. Shell further stated that the trial court called Ms. Tull to discuss attachments, however the record is silent.

Prejudice

There are at least three consequences to Mr. Shell's unfulfilled promise to the jury: 1) the unfulfilled promise created a negative inference towards Relator in general as well as Mr. Shell's credibility; 2) the Promised witness' testimony would have impeached Della as not only having been raised in an environment where prevarication was the norm, but that she was ostensibly proficient in her truthless endeavors, see Attachment 29: Pastor's transcribed interview with police, and 3) such impeachment would have transcended to the State's case as a whole with respect to the State's reliance upon duplicity and manipulation to effectuate a conviction.

Finally, for this writ's purpose, Relator accused Mr. Shell of exiting the guilt/innocence phase of the trial post haste; thus, providing no defense to the jury. This is verified at VB:P. 224:

> COUNSEL: "It's either let's get this done or let the chips fall.";
> COUNSEL: "Let's get it done, then we won't work Saturday."
> COUNSEL: "Let's get this over with. I have a compelling reason to do this tonight." (Three witnesses with plane tickets out of town the next day).
> COURT: "It's not making sense about them having plane tickets."

There were only two people: Relator's mother and sister, neither

testifying and both extended their stay, V9:P. 117, extolling Mr. Shell's busy schedule with difficulty resuming the trial the following Monday, Attachment 30.

Relator moves forward under the premise that he did in fact make federally defined IAC claims against Mr. Shell in state habeas corpus and in defense of those allegations, Mr. Shell submitted a false affidavit. The question now is whether such a submission constitutes an admission by conduct.

Question one; part B:

Would the submission of a pervasively false affidavit constitute an admission by conduct to the alleged ineffectiveness by counsel?

"Admission by conduct" cases are infrequent (minus "flight" issues, However, relator was able to find some cases of import: Mason V. Williams [3]; Ziang Sung Wan [4]; McQueeney [5]; and Reilly V. Sheridan Trucking Co. [6].

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[3] 1909 U.S. LEXIS 1885: The Mason Court found that Henry Hudson, knowing the name under which a business was run, of which he likely knew his name was exhibited as president - a corporation by name - of which he knew did not exist, and paid for goods as if other interests were concerned, constituted an admission by conduct. -Id at ****7.

[4] Ziang Sung Wan V. U.S., 1924 U.S. LEXIS 3022: the High Court opined that one's silence might be used as evidence aqainst him tending to establish ny hjis conduct, an admission to the crime. _Id at ***9 (citing Braum V. U.S., 168 U.S. 532 (1897))) -Id at ****7.

[5] McQueeny V. Williamington Trust Co., 1985 U.S. App. LEXIS 25060:"wrongdoing by the party in connection to its case, amounts to an obstruction of justice[,] is also commonly regarded as an admission by conduct." -Id at **15.

[6] 2019 U.S. Dist. LEXIS 251952: The Reilly Court found that "[f]alse or inconsistant statements can be construed as indication of consciousness of liability." -Id at *15.

Based on federal stare decises, it appears that Mr. Shell's false affidavit amounts to an admission by conduct.

Q1: Part C:

> Based on the facts and circumstances thus far, has any federally protected due process right(s) been violated?

Put another way, if the Court can agree that Relator suffered constitutional IAC and that it can fairly be stated that the IAC was admitted-to by and through fraud (proven after final state judgment) then can it be reasonably stated that Relator suffered a due process violation of constitutional dimension?

Rationale

Relator argues that this Court has made several opinions that appear to be in contrast to the judicial treatment thus far meted.

E.g., in 1967, the Court announced that its decision regarding the Due Process Clause "instructs safeguards, not the meticulous observances of state procedural prescriptions, but the fundamental elements of fairness in a criminal trial." Spencer v. Texas, 383 U.S. 554,563-64 (1967).

In DA's Office V. Osborne, 2009 U.S. LEXIS 4536, the Court altered Osborne's question to ask "whether consideration of Osborne's claim within the framework of the State's postconviction relief procedures 'offends some [fundamental] principle of justice'" or "transgresses any recognized principles of fundamental fairness in operation." (citing Medina V. California, 505 U.S. 437,446-48 (1992).

Texas is nototious for its "white-card" denials. Relator's habeas denial was predicated upon proven-after fraud; therefore, the appropriate question here is whether that particular fraud offends "some fundamental principle of justice" as defined within the Fourteenth Amendment of the U.S. Constitution. The Fifth Circuit stated: "[i]nfirmaties in state postconviction proceedings are not grounds for relief under § 2254, citing Moore V. Dretke, 369 F3d 844,846 (2004); Attachment 10:P. 2: par 2. The Court held that Relator has failed to state a claim cognizabe in federal habeas review citing In re Gentras, 666 F3d 910,911 (5th Cir. 2001). This begs the question: what if the state postconviction proceeding evinced evidence supporting the IAC claims and perhaps beyond?

The Circuit Court's findings appear to be contrary to this Court's holdings in Swarthout V. Cooke, 131 S.Ct. 859 (2022) (general improprieties occurring in state court proceedings that violate due process are cognizable if they create a fundamental unfairness); compare with Pennsylvania V. Finley, 481 U.S. 551,665 (1987) (postconviction relief procedures are constitutional if they comport with fundamental fairness). Given that Relator could not prove his attorney-fraud claims, it was not unreasonable to deny relief; however, given his evidence discovered after-the-fact, it appears contrary to justice to deny relief, whether by state reconsideration (two filed by Relator) or attempts to reenter federal habeas corpus (three filed by Relator) or state habeas corpus (fraud on the court) or trial court motions to investigate fraud allegations (two filed) or Supreme Court denials (one filed to date plus this application).

As it relates to the Fifth Circuit's refusal to review Relator's previously unadjudicated habeas claims at all three attempts to reenter federal habeas corpus, this is contrary to Fifth Circuit precedent as well as sister courts,

These legal conclusions are reminiscent of days past. In 2019, this Court discussed specific events that occurred within the 5th Circuit in 2007; specifically, the court's clerk committing **suicide** because he could no longer comply with the court's policy to deny pro se pleadings axiomatically, see Schexnayder V. Vannoy, 140 S.Ct. 354. Relator asserts that if the Fifth Circuit's culture has changed, it has done so only marginally. More precisely, Relator asserts that the Court's clerk is an acting judge by proxy. He asserts this because no reasonableminded judge/jurist/justice would have bypassed its own law just to deny relief

The State's decisions to deny relief are equally quetionable and clearly contrary to Texas law. See Ex parte Stoneman, 2018 Tex.Crim. App. LEXIS 369 (Unpubl.) (the State accused counsel of making completely false statements to the Court of Criminal Appeals violating his duty to candor to a tribunal); Willies V. Comm.Lawyer Discl., 2015 Tex.App. LEXIS 2466 (Willies, a lawyer, was found guilty of an "unmitigated and blatant lie" during a bench trial; Teter V. Comm. Lawyer Discpl., 2018 Tex.App. LEXIS 5846 £Teter was found guilty of violation Tex.R.prof.Conduct 3.03 because he filed two grievances on behalf of people he did not represent; and very similar to Relator's state habeas claims, see Cohn V. Comm.Lawyer Discpl., 1998 Tex.App. LEXIS 4831 for knowingly making a false statement of

material fact to a tribunal); Diaz V. Comm.Lawyer Discpl., 953 S.W. 2d 435 (Tex.App.-Austin 1997) (a false affidavit constitutes a false statement to a tribunal); and Ruhe V. State Bar, 1994 Tex.App. LEXIS 3948 (Ruhe, an attorney, executed and presented a false document to an office of the court) [7].

Texas' stare decises appears to be in Relator's favor [8].

Relator is aware of the difference between state and federal fraud on the court: federal law requires the fraud having been committed against a federal court. That said, in this case, does it really matter which court was violated? See Relator's 60(b)(3)(d)(3) motion [1:21-cv-574-LY] and his 60(b)(6) motion [1:13-cv-037-LY) (discussing counsel's state habeas fraud having affected his original timely-filed § 2254 and its subsequent voluntariy dismissal).

Based on the asserted unreasonable denials and adjudications on merits outside of the alleged fraud on the court and its procured judgment in State habeas corpus, no court has offered Relator a forum in which to plead his case.

Equally egregious, the 33rd Criminal District Court, Office of the District Attorney for the 33rd Judicial District, Third Court

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[7] Tex.R.Prof.Conduct 8.04(a)(3) defines "fraud" to include conduct having purpose to deceive, and not merely negligent misrepresentation or failure to apprise another of relevant information. Although the rules don't define "dishonesty," "deceit," or "misrepresentation," courts applying 8.04(a)(3) have given those terms ordinary meaning, generally meaning a "lack of honesty, probity, or integrity in principle." and a "lack of straight-forwardness." See e.g., Rosas V. Comm.Lawyer Discpl., 335 S.W. 3d 311,316 (Tex.App.-San Antonio 2010, no pet.); Thawer V. Comm.Lawyer Discpl., 553 S.W. 3d 177,186-87 (Tex. App.-Dallas 2017, no pet.).

[8] Relator's research could locate no pro se litigant successfully prosecuting a state fraud-on-the-court pleading/appeal.

Appeals, C.C.A., State Bar of Texas, U.S. District Court and the fifth Circuit have all seen Relator's overwhelming evidence of Mr. Shell's fraud. from all of that evidence, the courts knew or should have known that based on the surrounding facts and circumstances, Relator's habeas judgment was obtained by fraud; thus, his conviction was the product of constitutional IAC by Mr. Shell. Moreover, armed with this evidence, no state lawyer, judge or court moved to the investigative arm of the Texas State Bar to investigate the facts, Tex.R.Prof.Conduct, Rule 8.03, which mandates such. Relator asserts that prosecutors and judges alike have a duty to administer justice. See Tex.Code Judicial Conduct Canon, 3(A)(B)(1)(2)(5)(8) & (9) and 28 U.S.C. § 453.

Question of law

If a post-conviction state fraud on the court proves a defendant's IAC habeas corpus allegations, is there not a gross due process violation sufficient for federal habeas corpus (or §2244 successive petition) review where there is no collateral attack on the habeas proceeding and the initial habeas corpus attack is still front and center?

Relator is not attacking the state habeas proceeding, instead, simply asking the Court(s) to focus on the IAC claim, not the evidence proving the assertions which, ipso facto, is not the claim - something the Fifth Circuit has adamately refused to acknowledge.

Certainly equitable powers fall in there somewhere, at least any reasonable-minded citizen on the outside looking in would believe.

Question TWO: Was Relator deprived his constitutional right to due process where his trial was infected with pervasive, known-to-be false evidence via perjury?

Relator argues that his trial was permeated with false testimony to such a degree that minus the perjury, the outcome of the trial would have certainly diffeed. Moreover, Relator asserts that the prosecution team was well aware of the false testimony and failed to correct it.

The law

The Giglio Court held that "deliberate deception of a court and jurors by the presentation of false evidence is incomparable with 'rudimentary demands of justice.'" 405 U.S. 150,153 (1959). In Napue v. Illinois, this Court held that a conviction knowingly "obtained through the use of false evidence" violates the Fourteenth Amendment's Due Process Clause, 360 U.S. 264,269 (1959). To establish such a violation, Relator must establish that the prosecution knowingly solicited false testimony or knowingly allowed it "to go uncorrected when it appeared." -Ibid. This particular element requires that the false testimony "may have had an effect on the outcome of the trial." Glossip V. Oklahoma, 145 S.Ct. 612, 627 (2025); Giglio, 405 U.S. at 154; Strickler v. Greene, 527 U.S. 263,299 (1999).

The false testimony

NOTE: Although complainant's testimony was the height of falsity, in the interest of economy Relator will focus on the two most important lies.

a. During the investigation, complainant told police three versions of an alleged rape in the local park, Attachment #19; V8:P. 146. Police determined this to be a lie. See also Attachment #29. At trial complainant told a different story: that Relator had told her to lie [9] to police to "hide any trail," -Id. Over time, complainant had told several people about this "rape" each with a varied storyline: CASA, CPS, CAC, Melissa, Kris, Attachment 21. Importantly, when asked by the prosecutor whether Detective Dillard had followed-up with complainant after have found this "rape" story to be a lie, he said "no" because the prosecutor had asked him not to, V:3:P. 90.

b. Also during cross-examination, complainant told the jury that Relator had assaulted her in December of '07 and thereafter had a "poor relationship" with him. Now see Attachment # 25, dated 2/8/08; titled "That is my best friend," hardly indicitive of a "poor relationship. See Attachment #15 where Detective Dillard told Melissa that on the evening complainant ran away, on or near 2/28/08, she was working very, very hard at manipulating Dillard, other officers and CPS to go home to Lori's or Relator's.
The jury heard none of this.

The State's knowledge

Relator proposes that given no reinterview by Dillard, there is

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[9] This "he told me to lie" became a common theme. In cross-examination discuss her mother "busting her lip," complaiant told the jury that it was Relator that had hit her, V*:Pp. 173,174, and that he had told her to lie about who had actually hit her. Upon learning that a man named Marty tucker had acted inappropriately towards complainant, relator filed a police report which started the investigation. Complainant denied any misconduct by Marty and that Relator had "told her to lie"; blame it all on Marty, V8:Pp. 145,217.

reasonable way that complainant would have known that police concluded her "rape" story was a lie without an outside source. Therefore, its reasonable to believe that the prosecutor, who would have known about the lie, by and through a proxy, i.e, Melissa, CASA worker Margaret Pemberton, an attorney (an unlikely source) or Tiffany, a CPS worker (also an unlikely source), educated complainant on police findings and derived a scheme to overcome the case-destroying lie: tell the jury that Relator had told her to lie. According to Kris, complainant told him this lie around 2005, 1½ years before this case came about. Its difficult to reconcile how Relator could have anticipated the case 1½ years in advance and tell complainant to lie about it.

Its also fair to note that CASA, CPS, and the State were tied at the hip on this case. The prosecutor could not have prosecuted the case without CASA and CPS' help.

Materiality

The jury was led to believe that a) Relator, in anticipation of a far-in-the-future assault (1½ years in advance), planned to deceive police by and through complainant, and b) complainant didn't actually lie to police, she was a victim of Relator's diabolical planning. Had the jury left to contemplate the truth: complainant being a skilled liar - at the behest of others, there is a reasonable probability that no reasonable factfinder would have voted for guilt.

Evidence can be material even if it "goes to the credibility of the witness." Napue, 360 U.S. at 269. "The jury's estimate of the truthfulness and reliability of a given witness may well be deter-

manitive of guilt or innocence." Glossip, 145 S.Ct. at 628. As it relates to complainant's credibility juxtaposed to evidence unseen by the jury, Attachment #15 is quite demonstrative. Melissa told Dillard that "[t]here had been an underlying question of [complainant] being obsessed with [Relator] and a concern that she might try to get back to him." P. 2:line 2. Dillard told Melissa: "[t]o say [complainant] is a compulsive liar, that's not accurate but when she found herself in a situation she will try anything." -Id at P. 4. Melissa was aware that complainant was a "liar, manipulative, dramatic, and played people and circumstances against each other." Complainant was "devious." -Id. See Attachment #14: P. 4:par 1 where Melissa couldn't understand that a few weeks earlier, complainant wanted Relator to adopt her - a report created on 8/19/2008, eight months after the alleged "poor relationship."

At this juncture its fair to asses that Relator was the victim of gross ineffectiveness by trial counsel (constitutional violation) and Relator's newly discovered evidence certifies counsel's admission to that effectiveness. Internal to that ineffectiveness, counsel had in his possession unequivocal evidence that no crime had been committed with respect to the alleged sexual assault. Now, with overwhelming evidence that complainant was a liar to the n^{th} degree, there can be no confidence that Relator violated any burglary statute, also proven within complainant's own words that Relator had not harmed her in any manner. Falsus in uno, falsus in omnibus is an appropriate principle to consiider here, (discussed ahead in clearer detail).

Actual Innocence

The law

Actual innocence is established by demonstrating that, in light of newly discovered evidence, "it is more likely than not that no reasonable juror would have found Relator guilty beyond a reasonable doubt." Schlup v Delo, 513 U.S. 288,327 (1995); McQuiggins V. Perkins, 569 U.S. 383,386 (2013). "[a]ctual innocence, if proved, serves as a gateway through which a petitioner may pass" even where a procedural error exists. To be credible, such a claim requires Relator to support his allegations of constitutional error with new reliable evidence whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence - that was not presented at trial, -Id at 324.

Newly discovered evidence

As explained earlier, Relator accused Mr. Shell of constitutional ineffectiveness in his failure to investigate the case pretrial and in defense of those habeas claims, Mr. Shell produced a false affidavidt in order to mitigate his liability. This is Relator's newly discovered evidence. In fact, this evidence kills two birds with one stone: it demonstrates constitute constitutional error as well as providing unequivocal evidence of innocence.

Inclusive to Relator's IAC claims, he accused Mr. Shell of failing to interview disinterested fact witness, Ms. Susan Untermeyer (Susan). Apparently Relator was wrong in that counsel's office did have a phone conversation with Susan (initiated by her) at some point, Attachment #6: P. 5. Due to Mr. Shell's refusal to

communicate with Relator, he had no way of knowing. Nonetheless, after Relator's conviction, he obtained as affidavit from Susan, Attachment #22, which demonstrates by and through the words of the complainant, that Relator never harmed complainant in any form or fashion. Note that complainant's words came 1½ years after Relator's indictment and conviction.

In defense, Mr. Shell avered that he didn't present Susan due to her prior conviction for prescription writing, a plea bargain for seven years of probation, which she may have completed before Relator's trial; that rationale was unreasonable. The Fifth Circuit has constantly found that counsel's decisions regarding examinations and the presentation of witnesses and testifying fall within the catagory of trial strategy which enjoys a strong presumption of deference. See Pale V. Thaler, 645 F3d 281,291 (2011), and that the Court will not question counsel's reasonable strategic choices, Bower V. Quarterman, 497 F3d 459,479 (2007); compare with Strickland v. Washington 466 U.S. at 709 (counsel must be afforded "wide lattitude" when making tactical decisions regarding trial strategy).

As Relator understands, Susan became addicted to an opiate after an extreme medical procedure and a legal prescroption which spiraled out of control. Relator arques that Susan's colloquy would have hd little adverse effect on the jury's opinion of her given that given during her probation she raised twin pubescent boys, completing her sentence without ado. Any impeachment would have backfired. Its not unreasonable to state that Susan's factual knowledge, what the jury would construe as complainant's Freudian truth along with her willingness to testify irrespective of any

potential impeachment, certifies Mr. Shell's ineffectiveness while exposing Relator's actual innocence. Obviously there was no crime.

The Fifth Circuit proposes that what a witness would attest to is "largely speculative," Buckalew V. U.S., 575 F2d 710 (1978), as a basis to "disfavor uncalled witnesses." -Id. Susuan's willingness to testify offers pushback to this theory because here: 1) there is no reasonable strategy by counsel for not calling her to testify; 2) there is no question as to what she would have attested to; and 3) there can be little doubt that based on Susan's would-be testimony, the jury in whole would have reached a different verdict especially in conjunction with all of the outher lost testimony as earlier described. As this evidence doesn't muddy the waters, it clearly and convincingly supports Relator's assertion that he is a victim of a trial by liar and there was no crime.

Although Relator has demonstrated that there was no assault upon complainant whatsoever, he was also convicted of burglary of a habitation.

Burglary

Relator was charged with burglary of a habitation. See Tex.P.Code Ann, § 30.02. The indictment alleged that Relator entered complainant's habitation without the effective concent of the owner, with the intent to commit a felony; namely: indecency with a child. § 3.02(a)(1)(d), see Attachment #31. Relator admits that he did in fact enter the complainant and her sister's bedroom window without the owner's permission; however,not for nefarious reasons, rather, to deliver a requested cell phone and visit complainant.

Question Three:

Does a cumulated sentence contrary to state law constitute cruel and unusual punishment as defined within the Eighth Amendment of the U.S. Constitution?

Relator was charged by indictment of aggrevated sexual assault of a child and burglary of a habitation based on a single criminal episode tried within a single trial.

Texas law

a. Joinder and Prosecutions

Tex.P.Code § 3.02 states:

> a) a defendant may be prosecuted in a single criminal action (trial) for all offenses arising out of the same criminal episode.

b. Single Criminal Episode

Tex.P.Code § 3.01 defines "criminal episode" as the commission of two or more offenses ... under the following circumstances:

> 1) the offenses are committed pursuant to the same transactions that are connected or constitute a common scheme or plan; or
>
> 2) the offenses are repeated commission of the same or similar offenses.

See Baker V. State, 107 S.W. 3d 671,673 (Tex.App.-San Antonio 2003); Corwin V. State, 870 S.W. 2d 23,27-28 (Tex.Crim.App. 1993).

c. Cumulative Sentences

Tex.C.Crim.P., art. 42.08

This statute requires a trial judge to, where the defendant "has been convicted in two or more cases," art. 42.08(a), the subsequent conviction is to be run concurrently. "[T]he trial court's general authority under Tex.C.Crim.P. 42.08 to order consecutive sen-

tences is a statute limited by Tex.P.Code § 3.03." Baker at 672.

d. Tex.P.Code § 3.03 states in pertinent part:

> a. When the accused is found guilty of more than one offense arising out of the same criminal episode in a single action, a sentence for each offense shall be pronounced. Except as provided by § (b), the sentence shall be run concurrently.
>
> b. If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentence may run concurrently or consecutively if such sentence is for a conviction of:
> 1) An offense:
> A) Under Sec. 33.021 or an offense under §§ 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25, committed against a victim younger than 17 years of age at the time of the commission of the crime ...

Where Relator's sexual assault charge falls within the numerated offenses eligible for stacking, his burglary charge does not. § 3.03 is altogether dependent on the choices of the parties. here, the State chose to join Relator's two offenses into a single criminal action; therefore, the State cannot cumulate Relator's sentences. See Ex parte McJunkins, 954 S.W. 2d 39,40-41 (Tex.Crim. App. 1997); Mayo V. State, 321 S.W. 3d 576,583 (Tex.App.-Houston [14th Dist.] 2010) (disavowing Mayo's sentence because organized crime does not fall under one of the enumerated offenses for stacking).

As to the underlying paragraph attached to Relator's burgalry charge: intent to commit indecency w/child, (exposure), "[a] conviction for an offense set out in § 3.03 bars conviction for conduct that, on the facts of the face, is demonstrably part of the commission of the greater offense." Patterson V. State, 152 S.W.

3d 88,92 (Tex.Crim.App. 2004). Mr. Shell's failure to object to the improper sentence fall under plain error review in Texas. Texas requires that Relator show 1) error, 2) that is clear and obvious, and 3) that affected his substantial rights. Relator has met Texas requirements; however, a question exists as to whether the improper sentence affects the fairness, integrity, and public reputation in judicial proceedings."

As to substantial rights, Relator has thus far seen parole five times in fifteen years, each time garnering a set-off - not due to any adverse behavior in prison - on a non-aggrevated sentence. Its reasonable to believe that the Pardons and Parole Board has seen fit to have Relator die in prison. At 64 years old, Relator would be hard pressed to complete a concurrent sentence much less a cumulated one.

In 2018, this Court held that a failure to correct a plain sentencing error seriously affects the substantial rights of a defendant and would seriously affect the fairness, integrity, and public reputation of judicial proceedings. Rosales-Mireles V. U.S., 585 U.S. 129,138; See also U.S. V. Olano, 507 U.S. 725,736-37 (1993); Puckett V. U.S., 556 U.S. 129 (2009).

This concept is not new to the Fifth Circuit either; see Pimento-Soto, 2024 U.S. App. LEXIS 28195; U.S. V. Morin, 832 F3d 513,518 (2016) and Polk v. Davis, 2017 U.S. Dist. LEXIS 216769 *39,40.

There is a reasonable probability that had Mr. Shell objected to the cumulation order, the outcome of that proceeding would have differed.

IV. SUMMARY

Relator is challenging his conviction and incarceration sd illegal pursuant to trial ineffectiveness and gross State misconduct. He is currently confined of his liberty at the Clements Unit, 9601 Spur 591, Amarillo, Potter County, Texas 79107. While in jail, he knew he was in trouble with respect to trial counsel, see e.g., Attachment #32: letters to friend extolling his plight. Upon receipt of Mr. Shell's sworn affidavit, relator recognized that document as a fraud, Attachment #33 and responded immediately into the C.C.A.. Unfortunately, Relator's evidence was insufficient to plead and prove his case, see Attachment #34: compressed pleadings. Based on the facts, circumstances and evidence, this Court should agree that: 1) Relator filed constitutionally defined IAC habeas claims; 2) Mr. Shell responded with a false affidavit which comports to an admission by conduct; thus, 3) relator is a victim of federally protected effective assistance by counsel [9], a Sixth Amendment violation and its symbiotic due process [10], a Fourteenth Amendment violation; and 4) relator was also a victim of known perjury of a material nature, also a due process violation. A manifest miscarriage of justice will occur should the Court decide not to consider the application.

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[9] Evitts V. Lucey, 1985 U.S. LEXIS 42 ("... a criminal trial is thus not conducted in accord with due process of law unless the defendant, ****17, has counsel to represent him," See also McMann V. Richardson, 397 U.S. 759,771 n.14 (1970) ("Its long been recognized that the right to counsel is the right to effective counsel."); Cuyler V. Sullivan, 466 U.S. 335,344 (1980).

[10] Gideon V. Wainwright, 372 U.S. 335,340 (1963) (The Sixth Amendment right to counsel [is] so fundamental and essential to a fair trial, and so, to due process of law, that its made obligatiry upon states by the Fourteenth Amendment.").

V. PRAYER AND RELIEF SOUGHT

WHEREFORE, PREMISE CONSIDERED, Relator prays this Honorable Court will consider Relator's claims and evidence and thus, his actual innocence and GRANT the appropriate relief.

SO PRAYED this 22ND day of October, 2025.

VI. INMATE DECLARATION

Relator, STEVEN MICHAEL BACKSTROM, TDCJ #1657938, who currently resides at the Clements Unit, 9601 Spur 591, Amarillo, Potter County, Texas 79107, Date of Birth October 02, 1961, avers that the facts, statements and evidence presented herein are of his personal knowledge and is/are true and correct to the best of that knowledge - under pain and penalty of perjury.

Steven M. Backstrom
TDCJ #1657938

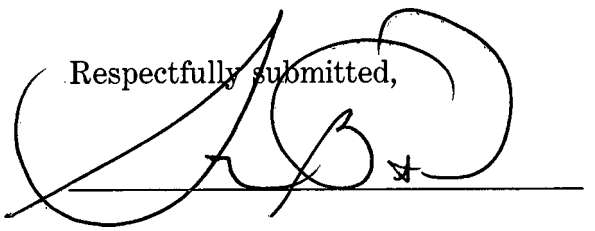
Respectfully submitted,

Steven M. Backstrom
TDCJ #1657938
9601 Spur 591
Amarillo, TX 79107

CONCLUSION

The petition for an extraordinary writ of habeas corpus should be granted.

Respectfully submitted,



Date: 10.22.2025