25-6143

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RODNEY JAMES DILWORTH-PETITIONER

vs.

ERIC GUERRERO, DIRECTOR -RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI

RODNEY JAMES DILWORTH

2661 F.M. 2054

TENNESSEE COLONY, TEXAS 75884

(903) 928-2211

QUESTION PRESENTED

WHETHER THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S REQUEST FOR A CERTIFICATE OF APPEALABILITY.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Rodney James Dilworth
2661 F.M. 2054
Tennessee Colony, Texas 75884
Petitioner

Eric Guerrero,Director
Texas Department of Criminal Justice-Instututional Division
Respondent

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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 judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is reported at 2025 U.S.App.LEXIS 23415, 2025 LX 316405.

A copy of petitioner's Motion for Certificate of Appealability appears at Appendix B to the petition.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 10, 2025.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

XIV Amendment to the United States Constitution, which provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

Texas Government Code §508.282(b)(3) which provides: In no event may a parole panel, a designee of the board, or the department dispose of the charges against the person later than the 15th day after the date on which the parole panel, a designee, or the department would otherwise be required to dispose of the charges under this section, unless the inmate or person is released from custody and a summons issued under section 508.251 requiring the inmate or person to appear for a hearing under section 508.281.

37 Texas Administrative Code §146.12, which provides: When a motion to reopen is granted, the previous disposition under §146.10 shall be set aside and shall be of no force and effect.

STATEMENT OF THE CASE

Petitioner is challenging a parole revocation. November 18, 1992, petitioner was sentenced to ninety-nine years and sixty years respectively after being convicted in state court. (Dkt. #18-22,pp.43-45;Dkt.#17,p.3).

Petitioner was paroled on May 14, 2007. On December 1, 2018, a pre-revocation warrant was issued for petitioner's arrest and executed. On July 17, 2019, petitioner pled guilty to aggravated assault and was placed on five years deferred adjudication community supervision. (Dkt.#18,p.25,pp.51-60;Dkt.18-26,p.2). Petitioner's parole was revoked and he was transferred to the Texas Department of Criminal Justice-Institutional Division on September 11,2019.(Dkt.#17-1,p.4).

Petitioner filed a motion to reinstate his parole or to reopen the hearing on August 24, 2019. On September 24, 2019, the parole board granted the motion and effectively set aside the revocation of August 20, 2019, and the pre-revocation warrant was withdrawn. (Dkt.#18-24,p.22). No new warrant was issued. However, petitioner was taken to another parole revocation hearing on November 4, 2019 and was revoked again under the same parole violation report (#12429326) on November 15, 2019.(Dkt.#17-2,pp.4,5;Dkt.#17-2,p. 9).

Petitioner filed another motion to reinstate/reopen on January 13, 2020. On February 4, 2020, the board granted the motion and effectively set aside the revocation of November 15, 2019. (Dkt.#18-24,p.23). No new warrants were issued by the parole board. However, based upon the same allegations, petitioner

was yet again taken to a parole revocation hearing and revoked on November 3, 2020. (Dkt.#17-3,p.4;Dkt.#17-3,pp.10-11). A third motion to reinstate/reopen was filed based upon limitations, which was denied on February 22, 2021. (Dkt.#17-4,p.2).

On December 1, 2020, petitioner filed his state application for a writ of habeas corpus alleging the parole board violated his state-created liberty interest in the expectancy of release by failing to accord him a timely revocation hearing in strict compliance with TEX.GOVT.CODE §508.282(b)(3).(Dkt.#18-22,pp.48-63). On May 24,2021, the state habeas trial court issued findings of fact and conclusions of law recommending denial of relief. (Dkt.#18-26,pp.8-13). On July 7,2021, the Texas Court of Criminal Appeals denied the application.(Dkt.#18-16).

Petitioner filed his federal petition on August 16, 2021. (Dkt.#18-16). On April 29, 2022, respondent answered asserting petitioner's claims were not cognizable on federal habeas review. (Dkt.#17) Petitioner filed a reply to the respondent's answer. (Dkt.##19,22). On November 16, 2023, petitioner filed a motion to construe his claims under 28 U.S.C.§2241.(Dkt.#47). The motion was denied by the magistrate on February 16, 2024. (Dkt.#53). Petitioner filed objections (Dkt.#54) on February 29,2024,which the district court overruled on March 28, 2024.(Dkt.#56) On June 25, 2024, the Magistarte issued a report and recommendation that the case be dismissed with prejudice.(Dkt.#63). Petitioner filed objections (Dkt.#66), which the district court overruled and dismissed the petition. (Dkt.## 67,68).

On September 4, 2024,petitioner filed a motion to alter or amend under Federal Rule of Civil Procedure 59(e)(Dkt.#70) which the court denied on January 16, 2025. Petitioner filed timely notice of appeal on February 7, 2025.

Petitioner moved the United States Court of Appeals for a certificate of appealability to appeal the dismissal of his habeas application. The court of appeals denied COA on September 10, 2025. Petitioner timely files this petition for as writ of certiorari urging this court to decide whether a Texas Parole statute provides him with a protected liberty interest; whether the district court violated Cullen v. Pinholster, 563 U.S. 170, 181-82, in considering evidence not before the state court in denying his claims and whether 28 U.S.C. §2241 can be used to challenge a state parole revocation proceeding.

REASONS FOR GRANTING THE PETITION

A habeas petitioner may not appeal the denial of his habeas petition unless the District Court or Court of Appeals "issues a certificate of appealabilty." 28 U.S.C. §2253(c)(1); see also Gonzales v. Thaler, 565 U.S. 134, 143, n.5,132 S.Ct. 641,181 L.Ed.2d 619 (2012). Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a COA "may issue...only if the applicant has made a substantial showing of the denial of a constitutional right." §2253(c)(2). To make that showing, a habeas petitioner must demonstrate "that reasonable jurists could debate whether...the petition should have been resolved in a different manner or that the issues presented were adequate

to deserve encouragement to proceed further."Slack v. McDaniel, 529 U.S. 473,484,120 S.Ct. 1595,146 L.Ed.2d 542 (2000).(internal quotation marks omitted). AEDPA does not "require petitioner[s] to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus." Miller-El v. Cockrell, 537 U.S. 322,338,123 S.Ct. 1029,154 L.Ed.2d 931 (2003). Rather, "[a]t the COA stage, the only question is whether" the "claim is reasonably debatable." Buck v. Davis,580 U.S. 100,137 S.Ct. 759,197 L.Ed.2d 1,17(2017).

The issue confronting the Fifth Circuit was whether reasonable jurists could debate the District Court's disposition of the petitioner's habeas petition. That question, in turn, depends whether reasonable jurists could argue that the Texas Court of Criminal Appeals' decision contravened or unreasonably applied clearly established federal law or that the decision was an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. They certainly could.

The Court has decided three cases directly relevant to this proceeding: Greenholtz v. Neb. Penal and Correctional Complex, 442 U.S. 1,99 S.Ct. 2100, 60 L.Ed.2d 668 (1979); Board of Pardons v. Allen, 482 U.S. 369,107 S.Ct. 2415,96 L.Ed.2d 303(1987); and Cullen v. Pinholster, 563 U.S. 170,131 S.Ct. 1388,179 L.Ed. 557(2011). In Greenholtz, the Court held that, despite the necessarily subjective and predictive nature of the parole-release decision, state statutes may create liberty interests in parole release that are entitled to protection under the

Due Process Clause. The Court concluded that the mandatory language and the structure of the Nebraska statute at issue in Greenholtz created an "expectancy of release," which is a liberty interest entitled to such protection. Ibid. In Allen, the Court held that a Montana statute, providing that parole board shall release prisoner on parole when certain prerequisites are met, held to create liberty interest protected under the Fourteenth Amendment Due Process Clause. In Pinholster, the Court held that habeas corpus review under §2254 is limited to the record that was before the state court that adjudicated the claim on the merits.

The following facts are provided. On August 20, 2019, the petitioner's parole was revoked in violation report #12429326 for an alleged aggravated assault offense. (SCHR-191,193-195).[1] Petitioner's revocation was set aside on September 24, 2019, by the parole board due to a defective charging instrument. (SCHR.118). The pre-revocation warrant was withdrawn. The violation report was resubmitted on October 28, 2019 based on the same allegation and petitioner was revoked on November 15, 2019. On February 4, 2020, petitioner's second revocation was set aside because the hearing officer failed to adhere to the board designee manual and procedures. (SCHR.119). The parole violator warrant was withdrawn and no further warrants were

1. SCHR. refers to the state court record. The page number follows SCHR.

for a hearing.

The statutory scheme provides a parolee with a protected liberty interest in the expectancy of release when the board fails to dispose of the charges within forty-one days and further prohibit the board from proceeding further after fifty-six days without releasing the person from custody and serving him a summons to appear for a hearing. Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed 2d 668 (1979). The statute uses the language "[i]n no event." The words "in no event" prohibits a parole panel, a designee, or the department from disposing charges after fifty-six days without releasing the person from custody and serving him a summons to appear for a hearing. Thus, the words "in no event" are an absolute bar to disposition under TEX.GOVT.CODE §508.282 (b)(3). However, the language "unless the inmate or person is released from custody and served a summons to appear" is an exception to this prohibitive bar. So, the exception is triggered only if the inmate or person is released from custody and served a summons to appear for a hearing. see Hall v. United States, 44 F. 4th 218 (4th Cir. 2022). (explaining "in no event" as meaning under no circumstances). The Hall panel came to this after its statutory interpretation of 28 U.S.C. §1915(g)).

This Court has made clear that a liberty interest can arise from a state statute. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989). Under any plausible reading of TEX.GOVT.CODE §508.282(b)(3), the plain

language requires the release of the parolee if the charges are not disposed of within fifteen days after which they were so mandated to be. In this case, fifteen days after April 29, 2020, which is May 14, 2020. Any board action after this date is void ab initio. Consequently, §508.282 of the TEX.GOVT.CODE places substantive limitations on the board's official discretion and is not silent about the outcome that must follow, i.e., if the regulations substantive predicates are present, a particular outcome must follow will create a liberty interest.

The state court denied petitioner's claim based soley on the state's assertion that petitioner's revocation was not set aside. (SCHR.-201). This is not so in light of the evidence presented in the state court proceeding. Cullen v. Pinholster, 131 S.Ct. 1388 (2011). The state court decision that petitioner's revocation was not set aside was an unreasonable determination of the facts in light of the evidence presented in the state court proceeding and its implicit finding of no liberty interest under §508.282 TEX.GOVT.CODE results in an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States according to Greenholtz, Allen and Kentucky, supra.

Texas has created a system whereby the parole board may revoke a parolee's parole, see TEX.GOVT.CODE §508.282, and having done so, it was requires to comply with due process when applying that law to petitioner's case. Texas cannot provide a process for revoking a parolee's parole (like that outlined in TEX.GOVT.

CODE §508.282(b)(3) and then arbitrarily refuse to follow the prescribed procedures. A state's refusal to comply with its own law can amount to a federal due process violation. Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Skinner v. Switzer, 131 S.Ct. 1289(2011). In fact, the state conceded in district court that petitioner's revocation was set aside and no further warrants were issued. (Dkt.# 17,pp.8-9). This was a prudent concession given 37 TEX.ADMIN.CODE §146.12 and the records from the parole board (SCHR.-118,119), but it dooms the state's argument that petitioner's state-created liberty interest were not violated because the state relied on the admittedly set aside revocation to deny petitioner's claim. The state is stuck with that defense. See, e.g. Wooten v. Lumpkin, 113 F. 4th 560 (5th Cir. 2024) @ n. 4(assuming without deciding that Cullen's holding, which makes no distinction between a petitioner and respondent, applies to respondent as well). There is only one circumstance under which the Texas Parole Board can dispose of a parole violation allegation after fifty-six days without a disposition hearing, and that is by release of the parolee from custody and serving him with a summons to appear for a hearing. Absent release, the parolee is entitled to notice and oppurtunity to address why the release and service of summons did not occur. Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Such did not occur in this case and the state makes no such argument that it did.

This issue is clearly debatable.

PETITIONER'S RULE 59(e) MOTION

Federal Rule of Civil Procedure 59(e) allows a litigant to alter or amend a district court's judgement within 28 days from the entry of judgement. The rule enables a district court to "rectify its own mistakes in the period immediately following" its decision. Banister v. Davis, 140 S.Ct. 1698 (2020) citing White v. Hampshire Dep't of Employment sec., 102 S.Ct. 1162(1982)

Petitioner's motion to alter or amend judgement is based on the district court's manifest error of law by failing to guage petitioner's claims based soley on the state court record in complaince with the dictates of Cullen v. Pinholster, 131 S.Ct. 1388 (2011). Specifically, petitioner asserted the district court failed to stay within the state court record when reviewing the reasonableness of the state court decision. (Dkt. #70) The district court denied the motion positing it was just another bite at the apple. (Dkt.#73,p.2).

The district court denied petitioner's claim based upon evidence never presented in state court proceedings. The only evidence adduced by the state in state court proceedings was petitioner's revocation of August 20, 2019, which was set aside as admitted by the respondent. None of the evidence presented by the state in the federal district court was submitted in the state court proceedings. The Fifth Circuit itself has intimated that Cullen applies to the state as well as the petitioner. In Wooten v. Lumpkin, 113 F. 4th 560 (5th Cir. 2024), the respondent argued that under the plain text of AEDPA, the record limitation

applies only to petitioner, and not the State. The Court replied "while we see some merit in Lumpkin's textual argument, we assume without deciding that Cullen's holding, which makes no mention of the distinction Lumpkin urges, applies to the respondent as well." Id at n.4. Justice Clarence Thomas, even before Cullen, recognized this fact when he wrote in his dissenting opinion "The majority's willingness to reach outside the state-court record and embrace evidence never presented to the Texas state courts is hard to fathom. AEDPA mandates that the reasonableness of a state court's factual findings be assessed "in light of the evidence presented in the state court proceeding," 28 U.S.C. §2254(d)(2), and also circumscribes the ability of federal habeas litigants to present evidence that they "failed to develop"before the state courts.§2254(e)(2)." Miller-El v. Dretke,125 S.Ct. 2317 (2005)(Justice Thomas dissenting). This issue is debatable.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Rodney James Dilworth

Date: NOVEMBER 1, 2025.