

No. 25-6164

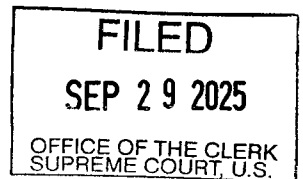
IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Shannon Bernard Jackson — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

The Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shannon Bernard Jackson
(Your Name)

810 FM 2821, West Hwy. 75, N.
(Address)

Huntsville, Texas. 77349-0005
(City, State, Zip Code)

(936) 295-9126
(Phone Number)

QUESTION(S) PRESENTED

QUESTION No. 1: Is a criminal defendant deprived of his rights under the Fourteenth Amendment to the United States Constitution to file a pro se brief after appointed counsel has filed a no-merit brief pursuant to Anders v. California, 87 S.Ct. 1396 (1967) when the record before the appellate court contains no evidence that appointed counsel provided the defendant with a copy of the Anders brief and informed the defendant of the right to access the appellate record and file a pro se brief?

QUESTION No. 2: Is a criminal defendant deprived of his rights under the Fourteenth Amendment to the United States Constitution when the State appellate process contains no adequate safeguards and protection that ensures that upon the filing of a no-merit brief by appointed counsel pursuant to Anders v. California, 87 S.Ct. 1396 (1967) the defendant was provided with a copy of the brief and was informed of the right to access the appellate record and file a pro se brief?

LIST OF PARTIES

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

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: Petitioner/Defendant, Shannon Bernard Jackson, No. #02257004, John M. Wynne State Farm, 810 FM 2821, West Hwy. 75, N., Huntsville, Texas, 77349-0005. Respondent/State of Texas, C/O: Jack Roady, Criminal District Attorney, Galveston County, 600 59th Street, Ste., #1001, Galveston, Texas, 77551

RELATED CASES

1. Jackson v. State, 2020 Tex.App.LEXIS 8134 (Tex.App. 14th Dist., Oct. 15, 2020).
2. In re Jackson, 2025 Tex.Crim.LEXIS 526 (Tex.Cr.App. July 30, 2025).
3. In re Jackson, 2025 Tex.Crim.App.Unpub.LEXIS 141 (Tex.Cr.App. Apr. 23, 2025).

TABLE OF CONTENTS

| | |
|--|------|
| OPINIONS BELOW | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| STATEMENT OF THE CASE | 4-7 |
| REASONS FOR GRANTING THE WRIT | 8-14 |
| CONCLUSION..... | 14 |

INDEX TO APPENDICES

APPENDIX A: Unpublished written Opinion delivered by the Fourteenth Court of Appeals on October 15, 2020, in Case No. #14-19-00229-CR, Styled: Shannon Bernard Jackson v. The State of Texas.

APPENDIX B: Unpublished written opinion delivered by the Texas Court of Criminal Appeals on July 30, 2025, in Case No. #PD-0416-25, Styled: Jackson, Shannon Bernard.

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|---|-------------|
| Anders v. California, 87 S.Ct. 1396 (1967) ... | 8, 10 |
| Ex Parte Johnson, 690 S.W.3d 302 (Tex.Cr.App. 2024) ... | 10 |
| Ex Parte Valles, 667 S.W.3d 806 (Tex.Cr.App. 2023) ... | 10 |
| Kelly v. State, 436 S.W.3d 313 (Tex.Cr.App. 2014) ... | 11 |
| Smith v. Robbins, 120 S.Ct. 746 (2000) ... | 10 |

STATUTES AND RULES

| | |
|---|-----------|
| Fourteenth Amendment United States Constitution ... | 9, 11 |
| Texas Rules of Appellate Procedure; Rule 38 ... | 10 |
| Rule 38.1 ... | 10 |
| Rule 48.4 ... | 9, 10, 13 |
| Rule 68 ... | 9 |
| Rules of The Supreme Court; Rule 10 ... | 8 |
| Rule 10(a) ... | 8 |

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Fourteenth Court of Appeals court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was July 30, 2025. A copy of that decision appears at Appendix B.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment United States Constitution, Section 1: 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 privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction to equal protection of the laws.

Rule 48.4 of the Texas Code of Criminal Procedure: In criminal cases, the attorney representing the defendant on appeal shall within five days after the opinion is handed down, send his client a copy of the opinion and judgment along with notification of the defendant's right to file a pro se petition for discretionary review under Rule 68. This notification shall be sent certified mail, return receipt requested, to the defendant at his last known address. The attorney shall also send the court of appeals a letter certifying his compliance with this rule and attaching a copy of the return receipt within the time for filing a motion for rehearing. The court of appeals shall file this letter in its record of the appeal.

STATEMENT OF THE CASE

From a Judgment & Sentence of Conviction entered by the 56TH Judicial District Court of Galveston County, Texas, in Case No. #17-CR-3031, Styled: The State of Texas v. Shannon Bernard Jackson, appeal was taken to the Fourteenth Court of Appeals for The State of Texas, in Case No. #14-19-00229-CR, Styled: Shannon Bernard Jackson v. The State of Texas. On October 15, 2020, the court of appeals affirmed the Judgment & Sentence of Conviction in an unpublished written opinion. (Appendix A).

On direct appeal before the court of appeals, Petitioner's court appointed counsel filed an appellate brief on behalf of the Petitioner in which counsel concluded that the appeal was frivolous and without merits. The court of appeals held that the appellate brief submitted by counsel met the requirements of *Anders v. California*, 87 S.Ct. 1396 (1967), by presenting a professional evaluation of the record and demonstrating why there were no arguable grounds to be advanced. In the mist of this finding, the court of appeals held that a copy of counsel's brief was delivered to the Petitioner, and the Petitioner was advised of his right to inspect the appellate record and file a pro se response to the brief, and as of date, that more than 60 hdays had passed and no pro se response had been filed. (Appendix A).

The court of appeals or the State of Texas, has not implemented any procedures within its appellate process to ensure or that enures that a defendant in face of an Anders Brief has in fact received a copy of counsel's brief and was informed of the

right to file a pro se response.

There was no evidence or modicum of evidence in the record from which the court of appeals could have made a factual determination that the Petitioner did in fact receive a copy of counsel's brief and was informed of the right to inspect the appellate record and file a pro se response, other than counsel's bald assertion that he had sent the Petitioner a copy of the brief and informed Petitioner of his right to file a pro se response.

Petitioner sought review of the decision delivered by the court of appeals with the Texas Court of Criminal Appeals (CCA).

The CCA refused Petitioner's Petition for Discretionary Review on July 30, 2025. (Appendix B).

Before the CCA Petitioner relied on the decision issued by the CCA in *Kelly v. State*, 436 S.W.3d 313 (Tex.Cr.App. 2014), that a court of appeal commits error when it allows a defendant's court-appointed counsel to withdraw declaring the defendant's appeal to be frivolous without first satisfying the defendant's express request to gain access to the appellate record in order to meaningfully respond to the Anders Brief that was presented on the defendant's behalf by his court-appointed counsel.

The CCA in reference to the authoritative decision delivered by the United States Supreme Court in *Anders v. California*, 386 U.S. 135 (1967) in *Kelly* stating that a court-appointed attorney who files an Anders Brief must fulfill a number of additional functions, He must write a letter to (1) notify his client of the motion to withdraw and the accompanying Anders

Brief, providing him a copy of each, (2) inform him of his right to file a pro se response and of his right to review the record preparatory to filing that response, and (3) inform him of his pro se right to seek discretionary review should the court of appeals declare his appeal frivolous. To this list the CCA added that appointed counsel who files a motion to withdraw and Anders Brief must also (4) take concrete measures to initiate and facilitate the process of actuating his client's right to review the appellate record, if that is what his client wishes, and that the most time-efficient method to facilitate this right of review is to require that, at the same time that he files the motion to withdraw and Anders Brief and carries out the notification functions (1) through (3), listed above, appointed counsel must also notify his client that, should he wish to exercise his right to review the appellate record in preparing to file a response to the Anders Brief, he should immediately file a motion for pro se access to the appellate record with the applicable court of appeals. Additionally, appointed counsel should include in his letter to the defendant a form motion for this purpose, lacking only the defendant's signature and the date, and inform the defendant that, in order to effectuate his right to review the appellate record pro se, should he choose to invoke it, he must sign and date the motion and send it on to the court of appeals within ten days of the date of the letter from appellate counsel. Counsel should make sure to supply the defendant with the mailing address for the relevant court of appeals, and at the same time, appointed counsel should

notify the court of appeals, in writing that he has completed the foregoing requirements.

Before the CCA Petitioner argued that (1) He was deprived his right to file a pro se response because he was never properly notified of the right to review the appellate record and file a pro se response by counsel, (2) The court of appeals erred by granting appointed counsel's motion to withdraw declaring the appeal to be frivolous because its determination of the matter was not based on the requirements and method of review set out in Kelly, and (3) The evidence was insufficient to support the court of appeals determination, because there was no evidence or sufficient evidence to support a finding that appointed counsel met the requirements of Kelly and notified Petitioner of the right to review the appellate record and file a pro se response.

Prior to the filing of Petitioner's Petition for Discretionary Review, the CCA granted Petitioner habeas relief, allowing Petitioner to file an Out-of-Time Petition for Discretionary Review, because appointed counsel fail to inform Petitioner of the right to file a Petition for Discretionary Review. In re Jackson, 2025 Tex.Crim.App.Unpub.LEXIS 141 (Tex.Cr.App. Apr. 23, 2025). Notably, this was one of the Kelly requirements, that appointed counsel inform the defendant of the right to file a petition for discretionary review.

REASONS FOR GRANTING THE PETITION

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons. Although, the reasons listed in Rule 10 of the Supreme Court Rules are neither controlling nor fully measuring the Court's discretion, as they indicate the character of the reasons the Court considers in granting review. Petitioner argues that review should be granted in this case for the purpose of determining whether a defendant is deprived of his right to file a pro se brief after appointed a counsel has filed a no-merit brief as contemplated by the decision delivered in *Anders v. California*, 87 S.Ct. 1396 (1967), when the record contains no evidence to support a finding and conclusion that appointed counsel sent a copy of the brief to the defendant and informed the defendant of the right to access the appellate record and file a pro se brief, by the reviewing court. Petitioner argues that the court that rendered judgment has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this Court's supervisory power under Rule 10(a) of the Supreme Court Rules.

The State appellate court's mere reliance on appointed counsel's bald assertion that he provided the Petitioner with a copy of the *Anders* brief and informed the Petitioner of the right to access to the appellate record and to file a pro se brief is constitutionally impermissible absent any conclusive and probative evidence or record support. It is argued that a court cannot accept an attorney's bald assertion on a critical or

disputed issue absent any evidence in the record.

Petitioner argues that this Court should determine whether his rights to Due Process under the Fourteenth Amendment to the United States Constitution were violated because the State does not provide an adequate safeguard or protection that ensure, that upon the filing of an Anders Brief by appointed counsel he was provided with a copy of the Anders Brief and informed of the right to access the appellate record and file a pro se brief.

For instance, Rule 48.4 of the Texas Rules of Appellate Procedure provides, that: "In criminal cases, the attorney representing the defendant on appeal shall, within five days after the opinion is handed down, send his client a copy of the opinion and judgment, along with notification of the defendant's right to file a pro se petition for discretionary review under Rule 68. This notification shall be sent Certified Mail, Return Receipt Requested, to the defendant's at his last known address. The attorney shall also send the court of appeals a letter certifying his compliance with this rule and attaching a copy of the return receipt within the time for filing a motion for rehearing. The court of appeals shall file this letter in its record of the appeal."

Thus, by virtue of Rule 48.4, the State afforded a defendant adequate protection and safeguard to ensure that a defendant is informed of the court of appeals decision and right to file a petition for discretionary review. The Texas Court of Criminal Appeals has held that the non-compliance of an attorney with Rule 48.4 is prima facie evidence that the defendant was not

informed of the court appeals decision and right to file a pro se petition for discretionary review. *Ex Parte Valles*, 667 S.W.3d 806 (Tex.Cr.App. 2023), and *Ex Parte Johnson*, 690 S.W.3d 302 (Tex.Cr.App. 2024).

Unlike Rule 48.4, Rule 38 of the Texas Rules of Appellate Procedure regarding the requisite of an appellate brief affords a defendant no protection or safeguard when it comes to appointed counsel's filing of an Anders Brief. Further, Rule 38.1 of the Texas Rules of Appellate Procedure contains no provision allowing appointed counsel to file a no-merit brief or to argue that the appeal is frivolous.

Notably, in *Anders* this Court granted certiorari to determine the extent of the duty of a court appointed appellate counsel to prosecute a first appeal from a criminal conviction, after that attorney had conscientiously determined that there was no merits to the indigent's appeal, which led to the authoritative disposition of an indigent defendant being provided with a copy of the brief and being informed of the right to access the appellate record and file a pro se brief. However, this Court did not authoritatively assign an adequate safeguard or protection to ensure how the defendant was to be sent a copy of the brief and informed of the right to access the appellate record and file a pro se brief.

Awareness is given to this Court's decision in *Smith v. Robbins*, 120 S.Ct. 746 (2000), that the States are free to adopt procedures for determining whether an indigent's direct

appeal is frivolous, other than the procedures set forth in Anders, so long as the procedures adequately safeguard the defendant's Fourteenth Amendment right to appellate counsel.

In Anders, this Court merely set out what would be an acceptable procedure for treating such appeals that has been determined to be frivolous by appointed counsel.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution largely covers to require that a State's procedure afford adequate and effective appellate review to indigent defendants. A State's procedure provides such review so long as it reasonably ensures that an indigent's appeal will be resolved in a way that is related to the merits of that appeal.

There is no statutory provisions in place in the State of Texas that permits the filing of a no-merit brief by appointed counsel representing an indigent defendant, and there is no statutory provision or procedure utilized in the State of Texas that adequately protects and safeguards the defendant's right of access to the appellate record and file a process brief.

The Texas Court of Criminal Appeals, although, has set forth an authoritative decision in reference to this Court's decision in Anderson, that is derived from the case in Kelly v. State, 436 S.W.3d 313 (Tex.Cr.App. 2014). The Texas Court of Criminal Appeals held that a court of appeal commits error, when it grants a court-appointed attorney motion to withdraw and declaring the defendant's appeal to be frivolous without first satisfying the defendant's express request to gain access to the appellate

record in order to meaningfully respond to the Anders brief that was presented on the defendant's behalf. Although, the Texas Court of Criminal Appeals labeled a number of requirements to be fulfilled by appointed counsel upon the filing of an Anders brief, the requirements do not compare to Rule 48.4 or comport with Rule 48.4, that would provide an adequate safeguard and protection to ensure that a defendant is provided with a copy of the brief and informed of the right to access the appellate record and file a pro se brief.

The problematic resolution of the matter by the State court of appeals, and review of the decision delivered by the court of appeals by the Texas Court of Criminal Appeals that is the State's highest criminal appellate court.

In this case, the court of appeals determination that the Petitioner had been provided with a copy of the Anders brief and was informed of the right to access to the appellate record and file a pro se brief hinged on the bald assertion of the appointed counsel, that he had provided Petitioner with a copy of the brief and informed Petitioner of the right to access the appellate record and file a pro se brief. This assertion was never ascertained to be true, as there is no provisions, procedures, or process in use to ascertain the truthfulness of the bald assertion averred by appointed counsel. There is practically no safeguard or protection to ensure that a defendant in the State of Texas is afforded the opportunity to access the appellate record and file a pro se brief upon the filing of an Anders brief by appointed counsel. As, argument to the

Texas Court of Criminal Appeals, that the court of appeals erred, in view of a complaint that the defendant was not allowed to file a pro se brief because he was not provided with a copy of the brief and informed of the right of access to the appellate record and file a pro se brief is merely a complaint subject to the discretionary process of the Texas Court of Criminal Appeals.. Thus, a criminal defendant in the State of Texas has no recourse during the appellate process to complain of a right that was not accorded under Anders.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ 
Shannon Bernard Jackson

Date: September 29, 2025