

25-7191

No. _____

FILED
APR 01 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Calvin Gary Walker — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Calvin Gary Walker
(Your Name)

3710 Roland Road
(Address)

Beaumont, Tx. 77708
(City, State, Zip Code)

337-244-0801
(Phone Number)

QUESTION(S) PRESENTED

1. Did the District Court err in denying relief?
2. Did the District Court err in denying Mr. Walker's habeas application without holding a hearing or otherwise developing the record to resolve the conflicts between Mr. Walker's evidence and that presented by the State?
3. Did the Fifth Circuit err in affirming the District Court's evaluation of Mr. Walker's constitutional claim by denying all three, a hearing a rehearing and a certificate of appealability, notwithstanding evidence suggesting that reasonable jurists could find these determinations debatable or erroneous?

Identities of Parties and Council

- The parties involved are Appellant Calvin Gary Walker and Appellee, the State of Texas.
- Mr. Walker was represented in District Court by counsel Dick DeGuerin and Brian Garris.
- Jonathan D. Landers served as appellate counsel for Mr. Walker.
- The State was represented in District Court by Pat Knauth and Angela M. Kneeland, Assistant Criminal District Attorneys, Jefferson County, Texas, 1085 Pearl St., Suite 300, Beaumont, Texas 77701.
- Angela M. Kneeland acted as counsel for the State on appeal.
- Calvin Gary Walker filed pro se in Federal District Court for the Eastern District of Texas, Beaumont Division.
- Calvin Gary Walker filed pro se in the Fifth Circuit Court of Appeals.
- Calvin Gary Walker is filing pro se in the United States Supreme Court.

Related Cases

All Captions: *Calvin Gary Walker v. The State of Texas*

- Fifth Circuit Court of Appeals, Case No. 26-40010 *Final date entered: 3/26/2026*
- Federal District Court, Case No. 1:25-CV-358 *Date entered: 1/2/2026*
- Criminal District Court of Appeals, Case No. PD-0241-25 *Date entered: 5/21/2025*
- Ninth Court of Appeals, Case No. 09-24-000123-CR *Date entered: 3/7/2024*
- Writ of Habeas Corpus, Case No. F14-19966-A *Date entered: 3/6/2024*
- Original Filings: ***EX PARTE***: Calvin Gary Walker, Trial Court, Case No. F14-19966-A

TABLE OF CONTENTS

1. Motion For Leave To Proceed <i>In Forma Pauperis</i> , including affidavit.	
2. Nature of Supreme Court Review	
3. Cover page.	
4. Questions presented.	
5. List of Parties, Council and Related Cases	
6. Table of Contents	
7. Index of Appendices	
Appendix A. Fifth Circuit Court of Appeals Denying Relief	
Appendix B. U.S. District Court Denying Relief/Magistrate Judges Report	
Appendix C. 5th Circuit Court of Appeals Denying Relief	
Appendix D. 9th Court of Appeals Opinion Order Denying Relief/State Court Order Denying Relief.	
Appendix E. Affidavits of. Attorney Dick DeGuerin, Defendant Calvin Walker, District Attorney Tom Maness	
8. Table of authorities	
9. Opinions below	
10. Jurisdiction	
11. Constitutional and Statutory Provisions Involved	
12. Statement of the Case _____	1
Questions presented (Reiterated) _____	2
Statement of Facts/The Habeas Application _____	2
The States Reply _____	6
The District Court denies relief without a hearing oh _____	9
Summary of the Argument _____	10
Standard of Review _____	11
Argument _____	11
I. Did the District Court err in denying relief? _____	12
A. The legal basis of the underlying ineffectiveness. Claim _____	12
B. The District Court erred in denying relief on the ineffective assistance of counsel claim _____	18
1. Trial counsel was ineffective _____	18
2. The trial court abused its discretion in denying relief _____	24
II. Did the District Court err in denying Mr. Walker's habeas application without holding a hearing or otherwise developing the record to resolve the conflicts between Mr. Walker's evidence and that presented by the State? _____	29
Prayer _____	34

TABLE OF CONTENTS

Certificate of Service	35
Certificate of Compliance	35
13. Reasons for Granting the Partition	
14. Certificate For proof of service.	

INDEX OF APPENDICES

Appendix A. Fifth Circuit Court of Appeals denying relief. Case No. 26-40010.

Appendix B. United States District Court denying relief, including Magistrate Judges' report and recommendations. Case No. 1:25-CV-358.

Appendix C. Fifth Circuit Court of Appeals denying rehearing relief. Case No. 26-40010.

Appendix D. Ninth Court of Appeals opinion and order denying relief. Case No. 09-24-00123-CR. Includes a copy of the State Courts decision. Case No. F14-19966-A.

Appendix E. Affidavits, Defense Attorney: Dick DeGuerin
Defendant: Calvin Walker, and District Attorney: Tom Maness

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 A to the petition and is

reported at Fifth Circuit Court of Appeals; 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 B to the petition and is

reported at UNITED States District Court; 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 C to the petition and is

reported at Ninth Court of Appeals; or,

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

is unpublished.

The opinion of the State District Court court appears at Appendix D to the petition and is

reported at State District Court; 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 3-20-2026.

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: 3-26-2026, 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 4-2-2025.
A copy of that decision appears at Appendix D.

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

- The 6th Amendment of the United States Constitution and Article 1, Section 10, of the Texas Constitution
- Tex. Code Crim. Pro. Ann. Art. 11.072 pg. 31
- Tex. Pen. Code 32A2 (b)(10) pg. 3

Statement of the Case

NOTE: In place of the pronouns "I" and "my" within this petition, my name "Mr. Walker" will be referencing me throughout the document.

The *conflicting* decisions pertain to; 1) The Pennsylvania Supreme Court; 2) The Ninth Court of Appeals in Beaumont, Texas; 3) The United States District Court for the Eastern District of Texas, (*Beaumont Division*), and 4) The Fifth Circuit Court of Appeals. Notably, each court's final opinion remains *unpublished*, which often indicates a divergence in their rulings. This case is a complete duplicate of the Bill Cosby proceedings before the Pennsylvania Supreme Court, where the outcome markedly differed from that reached by the Ninth Court of Appeals, the Fifth Circuit Court of Appeals, and the United States District Court for the Eastern District of Texas, (*Beaumont Division* in Mr. Walker's matter. (Refer to pages 20-24 in this Brief). Commonwealth versus Cosby, 252. A. 3d. 1092 (PA .2021).

Under Appendix B: Report and Recommendations of the United States Magistrate Judge. (Page 10, first paragraph of the report) The Magistrate Judge observes, "At most, the evidence demonstrates that Mr. Maness did not intend to pursue state charges at the time Petitioner entered into the federal plea agreement. However, Mr. Maness did not make a binding commitment to forgo state charges in the future." The District Judge conducted a Trial De Novo, adopted this ruling, and the Fifth Circuit affirmed these decisions. Mr. Walker was required to demonstrate the existence of an agreement on the merits, and it appears he met this requirement through the affirmation by the Magistrate Judge. Bill Cosby's conviction was overturned due to the actions taken by the successor of the previous District Attorney, who pursued charges following their predecessor's departure from office. This situation closely mirrors an identical scenario. There is little precedent guiding the lower courts in whether to hold an evidentiary hearing. If this court takes this opportunity to provide guidance, oral arguments will assist in the decisional process.

On October 1, 2019, Mr. Walker was convicted of securing execution of a document by deception. CR at 454. He was sentenced by a jury to 10 years community supervision. *Id.* On January 24, 2024, he filed a writ of habeas corpus pursuant to Texas Code of Criminal Procedures Article 11.072. CR at 4-89. He alleged his trial counsel was ineffective in failing to identify and raised the due process violation that arose when Mr. Walker relied on a statement by the District Attorney that the State would not pursue criminal charges if Mr. Walker accepted a federal plea agreement. *Id.* Mr. Walker requested a hearing on the issue. *Id.* The state responded, and the District Court denied both a hearing and the habeas

application in an order entered on March 6, 2024. Mr. Walker filed A timely notice of appeal. CR at 676.

It appears that the documentation supporting Mr. Walker's request for a certificate of appealability in the Fifth Circuit Court of Appeals was inadvertently overlooked. The *unpublished* opinion provides significant insight into this matter.

QUESTION(S) PRESENTED

1. Did the District Court err in denying relief?
2. Did the District Court err in denying Mr. Walker's habeas application without holding a hearing or otherwise developing the record to resolve the conflicts between Mr. Walker's evidence and that presented by the State?
3. Did the Fifth Circuit err in affirming the District Court's evaluation of Mr. Walker's constitutional claim by denying all three, a hearing a rehearing and a certificate of appealability, notwithstanding evidence suggesting that reasonable jurists could find these determinations debatable or erroneous?

STATEMENT OF FACTS

I. THE HABEAS APPLICATION.

The merits of Mr. Walker's habeas application boiled down to a single factual determination: Did Mr. Walker and his defense counsel rely upon an assurance from the sitting Jefferson County District Attorney that no state criminal charges would be filed if he agreed to accept a federal plea deal? Mr. Walker submitted affidavits from himself and his defense counsel, various other documents, and an initial plea offer from the federal prosecutor which showed the Federal and State Governments intended to resolve all cases together to prove the factual basis of his claim. The State responded with documents contesting the factual basis of the claim.

On May 4, 2011, Mr. Walker was charged in the United States District Court for the Eastern District of Texas in a 37-count indictment related to his work for the Beaumont Independent School District. CR at 34. That case was tried to a jury in December of 2012, but the jury was unable to reach a unanimous verdict on any count and a mistrial was declared. CR at 33. Shortly after the mistrial, the United States offered Mr. Walker a plea agreement that included the dismissal of federal charges if Mr. Walker agreed to plead guilty to a state misdemeanor offense. CR at 63-64, 87-88. The plea offer from Assistant United States Attorney Rawls stated:

The government proposes that the case be resolved by a state misdemeanor plea, civil forfeiture and other conditions. Mr. Walker would enter a misdemeanor plea to a violation of Deceptive Business Practices, §32A2(b)(10), TX Penal Code, making a false and misleading statement of fact concerning the price of his services by the submission of altered invoices to BISD. The state would recommend a sentence of probation.

CR at 87.

This plea offer shows that the State and Federal Governments were working together to resolve the case. Mr. Walker rejected this plea offer. CR at 63-64. Later, the Federal Government offered a second plea agreement. If Mr. Walker agreed to plead guilty to the federal misdemeanor offense of willfully failing to pay a tax and agree to pay restitution, the Government would agree to dismiss all other charges against him. CR at 25-31, 61-64.

Mr. Walker was reluctant to accept the plea deal, in part because he was concerned that the State would still be able to prosecute him for the same conduct underlying the federal indictment. CR at 61-64. Defense counsel, Mr. DeGuerin, had the same concerns. *Id.* Mr. Walker discussed this concern with Mr. DeGuerin during a meeting at Mr. DeGuerin's office. *Id.* Mr. DeGuerin called Tom Maness, the elected District Attorney of Jefferson County, to ask if the State would pursue charges if Mr. Walker accepted the federal plea offer. *Id.* Mr. Maness informed Mr. DeGuerin that he was aware of the federal plea offer, and "assured [him] he would not pursue state charges unless there was new or additional evidence." CR at 61.

Relying on Mr. Maness's statement, Mr. Walker agreed to accept the federal plea offer. Mr. DeGuerin explains, "[h]ad he not given me that assurance I would have advised Mr. Walker not to accept the deal in federal court." *Id.* In accordance with the terms of the agreement, the United States Attorney's Office filed a one count information on July 13, 2012, which charged Walker with failing to timely pay a tax owed. CR at 52. On July 17, 2012, the parties signed the plea agreement in federal court, and the agreement was accepted by that court. The agreement also called for the dismissal of the 37-count indictment. *Id.* On December 12, 2012, Mr. Walker was sentenced to 5 years of probation which he successfully completed. CR at 54. The day after sentencing, Mr. Maness was quoted in the Beaumont

Enterprise as giving a statement similar to the one he gave to Mr. DeGuerin. According to the newspaper, Maness said “that if new evidence is presented, the federal government or the state could file new charges. He added, however, that it is rare for the state to take on a case already brought to a federal court.” CR at 85.

In spite of Mr. Maness assurance that no state charges would be filed, Mr. Walker was indicted by Jefferson County on July 29, 2014. CR at 66. By this time, Mr. Maness had retired as Jefferson County District Attorney, and Cory Crenshaw had been appointed to the position. CR at 74. Mr. Crenshaw, and U.S. Attorney Bales, “initiated a county-wide public corruption and violent crimes task force” prior to Mr. Walker’s indictment. CR at 77. A news article supports what Mr. DeGuerin states: the state charge was based on the same information gathered by the federal government. CR at 80. (“Crenshaw said his office took information gathered by federal investigators for the recent state indictment of Walker, but that most of the investigation was done independently.”).

During the pendency of the state case, Mr. Walker’s defense team filed two pretrial writs of habeas corpus, both focusing on issue involving double jeopardy. *See Ex Parte Walker*, 489 S.W.3d 1 (Tex. App.—Beaumont 2016, pet. ref’d) (discussing the “sham” exception to dual sovereignty doctrine); *Ex parte Walker*, No. 09-17-00472-CR, 2018 WL 1864618 (Tex. App.—Beaumont Apr. 18, 2018,

pet. ref'd) (discussing the separate sovereigns exception to the Double Jeopardy Clause). However, trial counsel never recognized or raised the Due Process issue that arose when Mr. Walker relied on Mr. Maness's statement that he would not be seeking state charges if Mr. Walker accepted the federal plea agreement, only to have his successor take the opposite action.

Of course, Mr. Walker provided the District Court with the legal arguments supporting his claim of ineffective assistance of counsel, and explained that counsel was ineffective in failing to raise the issue prior to trial.³ CR at 9-22. Mr. Walker also requested a hearing from the trial court. CR at 4, 22.⁴

II. THE STATE'S REPLY.

The State filed a reply briefing. CR at 91-147. That briefing argued a hearing was not necessary, generally denied the factual allegations in Mr. Walker's habeas application, and primarily focused on proving there had been no agreement between the State and Mr. Walker prior to his federal plea agreement. *Id.* The State agreed that if trial counsel failed to discover and present a pretrial motion that would have

³ The legal framework for ineffective assistance of counsel and the underlying due process argument will be briefed in the argument section, *supra*.

⁴ Mr. Walker also filed a motion detailing the need for a hearing, which has been omitted from the clerk's record. He will be asking the District Clerk to supplement the record with that motion.

changed the outcome of the case, then trial counsel would be ineffective. CR at 110. The State's briefing also did not contest the legal basis of this claim, that if Mr. Walker relied upon a promise by the State when he agreed to accept the federal plea offer then it would violate Due Process for the State to later pursue charges. CR at 91-147. The State did strongly disagree with Mr. Walker's factual arguments.

The State attacked Walker's and trial counsel's affidavits. It was noted there was no date given for the conversation between DeGuerin and Maness, and that DeGuerin did not raise this claim pretrial.⁵ CR at 15-16. The State also relied on an affidavit from Mr. Maness himself. CR at 16-18. In his affidavit, Mr. Maness did not claim that the conversation recalled by both Mr. Walker and Mr. DeGuerin did not take place. CR at 629-31. Instead, he stated he had "no personal recollection of ever speaking with Mr. DeGuerin about any case during my tenure as the district attorney." *Id.* Mr. Maness repeated himself later in the affidavit, explaining "I have no personal recollection of the phone conversation referenced. . ." *Id.* Importantly, he also had "no specific recollection of an interview with the press regarding the case," but we know he did speak with the press about his office's plans not to pursue charges. CR at 84-85; 629-31. He specifically noted that although he had "no

⁵ This is, of course, the point of the habeas application.

specific recollection of an interview with the press” it was “possible I made the comments reflected in the article.” CR at 630.

The State also argued that Walker’s affidavit lacked credibility because of minor differences between his and his trial counsel’s affidavit, and that Mr. DeGuerin’s affidavit was not credible because it failed to discuss a conversation with Maness in 2023, after the trial had concluded. CR at 115-18. The State also argued that Walker’s affidavit conflicted with statements in his federal plea agreement and federal plea transcript where he stated the written federal agreement was complete, and that he was not pleading guilty based on other promises. CR at 118-22. Finally, the State argued that because Mr. DeGuerin had thoroughly litigated different pretrial issues, it was doubtful that he would have missed the winning issue. CR at 123-126.

Finally, the State made various legal arguments. The State argued that if a promise had been made, there was a strategic reason for not raising the relevant legal argument prior to trial, that there was not an *enforceable* promise, that Mr. DeGuerin could not simply obtain relief by “falling on his sword”, and attempted to distinguish various authority cited by Mr. Walker. CR at 124-46.

III. THE DISTRICT COURT DENIES RELIEF WITHOUT A HEARING.

The District Court found Mr. Walker's claims were "self-serving" and "without supporting proof. . ." CR at 668. The Court claimed "[t]he only items in the record regarding this new claim are the sworn affidavits of applicant and of Mr. DeGuerin, and some vague news articles." This was false, and the Court never discussed the plea offer from federal prosecutors proving the State and Federal Government were working together to resolve this case. See CR at 124-91. Much of the District Court's findings focused on conflicting statements between the affidavits of Mr. Walker and DeGuerin and statements in the federal plea agreement and plea colloquy. CR at 670-71.

The Court also denied the request for a hearing. CR at 672-74. In making this ruling, the Court once again omitted important evidence from the legal analysis. *Id.*⁶ The Court held that the conflicting federal plea documents and the affidavits of Mr. Walker and Mr. DeGuerin cancelled each other out, and that the "the weight of former District Attorney Tom Maness' affidavit . . . whom from many, many years of experience this Court has found to be a credible and truthful individual. . ."

⁶ "[A]pplicant did not allege any extra-record evidence, other than the two affidavits and news articles, to support his ground for relief. Accordingly, no live evidentiary hearing is necessary." CR at 672.

obviated the need for a hearing. CR at 672-73. It was not discussed that Maness had not averred that no phone call with Mr. DeGuerin took place, but only that he did not recall such a conversation.

The Court denied both a hearing and relief. CR at 665-75.

SUMMARY OF THE ARGUMENT

Prior to accepting a plea agreement in federal court, Mr. Walker, through his attorney, Mr. DeGuerin, received an assurance from the Jefferson County District Attorney that the State would not pursue criminal charges against Mr. Walker unless new evidence was uncovered. Relying on this assurance, Mr. Walker accepted the federal plea agreement. Years later, the State, through a new District Attorney, filed state charges against Mr. Walker (although no new evidence had been discovered). Mr. Walker argues that this action by the State violated his right to Due Process, and that the only remedy for this violation was dismissal of the State charges.

Trial counsel failed to identify or raise the Due Process issue prior to trial, and as a result was ineffective. Mr. Walker argues that the District Court reversibly erred by finding otherwise, and by failing to hold a hearing in this matter.

STANDARD OF REVIEW

This Court has previously discussed the standard of review in this type of proceeding:

An appellate court reviews for abuse of discretion a trial court's ruling on the merits of an application for writ of habeas corpus. *Ex parte Klem*, 269 S.W.3d 711, 718 (Tex.App.-Beaumont 2008, pet. ref'd). In the appeal from the order in the habeas corpus proceeding, “[t]he sole purpose of the appeal is to do substantial justice to the parties.” Tex.R.App. P. 31.2. This Court must “render whatever judgment and make whatever orders the law and the nature of the case require.” Tex.R.App. P. 31.3.

Ex parte Arjona, 402 S.W.3d 312, 314 (Tex. App.—Beaumont 2013, no pet.).

Further, a trial Court’s misidentification of the relevant law, or misapplication of the law, constitutes an abuse of discretion. “A trial court has no ‘discretion’ in determining what the law is or applying the law to the facts.” *Huie v. DeShazo*, 922 S.W.2d 920, 927 (Tex. 1996). “Misapplication of the law to the facts of a particular case is a *per se* abuse of discretion.” *State v. Ballard*, 987 S.W.2d 889, 893 (Tex. Crim. App. 1999).

ARGUMENT

Mr. Walker argues in order to do substantial justice to the parties this Court should remand to the District Court for additional fact finding, specifically a hearing.

However, because an understanding of the underlying ineffective assistance of counsel claim is necessary, he briefs the hearing issue second.

I. DID THE DISTRICT COURT ERR IN DENYING RELIEF?

A. The legal basis of the underlying ineffectiveness claim.

A defendant in a criminal case is entitled, under both the Texas and United States Constitutions, to the reasonably effective assistance of counsel. *See, e.g., Wilkerson v. State*, 726 S.W.2d 542, 548 (Tex. Crim. App. 1986). A defendant has the burden to prove a claim of ineffective assistance of counsel. *Jackson v. State*, 877 S.W.2d 768 (Tex. Crim. App. 1994). The burden is by a preponderance of the evidence. *Cannon v. State*, 668 S.W.2d 401 (Tex. Crim. App. 1984). There are two elements to an ineffective assistance of counsel claim. “First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). This first prong is the equivalent of a determination of error. “To show deficient performance, the first prong of the *Strickland* standard, [Mr. Walker] must prove that his counsel's performance fell below an objective standard of professional norms.” *Garcia v. State*, 308 S.W.3d 62, 66 (Tex. App.—San Antonio 2009, no pet.).

Second, the defendant must show that the “deficient performance prejudiced the defense.” *Strickland*, 466 U.S. at 687. Under *Strickland*, in order to show prejudice a “defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. For an error on defense counsel’s part to be prejudicial, there must be a reasonable probability that, but for counsel’s unprofessional errors, the outcome of the proceeding would have been different. *Ex parte Zepeda*, 819 S.W.2d 874, 876 (Tex. Crim. App. 1991). “Reasonable probability” means a “probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. This carries a lower burden of proof than the preponderance of the evidence standard. *See Bouchillon v. Collins*, 907 F.2d 589, 595 (5th Cir.1990); *Strickland*, 466 U.S. at 694. An appellant need not show that counsel's deficient performance more likely than not altered the outcome of the case. *Milburn v. State*, 15 S.W.3d 267, 269 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

Finally, trial counsel have been found ineffective for the failure to file pretrial motions applicable to their client’s cases. *See Murphy v. Puckett*, 893 F.2d 94 (5th Cir. 1990) (holding that counsel was ineffectiveness for failing to raise a valid claim of double jeopardy as a defense); *Ex parte McCormick*, 645 S.W.2d 801 (Tex. Crim. App. 1983) (conflicted trial counsel was ineffective for failing to obtain a severance

of co-defendant's trial); *Sanders v. State*, 715 S.W.2d 771 (Tex. App.—Tyler 1986, no pet.) (trial counsel ineffective for failing to file motion concerning client's involuntary confession); *Boyington v. State*, 738 S.W.2d 704 (Tex. App.—Houston [1st Dist.]1985) (failing to file motion to suppress fruit of unlawful arrest); *Mitchell v. State*, 762 S.W.2d 916 (Tex. App.—San Antonio 1988) (counsel ineffective for failing in his duty to attempt through all legal means to have evidence detrimental to his client suppressed.).⁷

The Supreme Court first addressed the binding nature of plea agreements in *Santobello v. New York*, 404 U.S. 257 (1971). In *Santobello*, the original prosecutor had “agreed to make no recommendation as to the sentence” if the defendant would plead guilty to a lesser included offense. *Id.* at 258. The defendant pled guilty to that lesser offense. *Id.* However, after the plea and prior to sentencing, a new prosecutor took over, and rather than follow through with the agreement “recommended the maximum one year sentence.” *Id.* at 259. The judge sentenced the defendant to the maximum, but also explained he was not influenced by the prosecutor's recommendation. *Id.* at 259-60.

⁷ The State agreed that failing to file a meritorious pretrial motion constitutes ineffective assistance of counsel. See CR at 13.

The Court explained that the “record represents another example of an unfortunate lapse in orderly prosecutorial procedures . . .” and that “‘plea bargaining,’ is an essential component of the administration of justice.” *Id.* The Court noted that all of the benefits of plea bargaining “[h]owever, . . . presuppose fairness in securing agreement between an accused and a prosecutor.” *Id.* at 261. It was noted that forcing prosecutors to follow through with plea agreements would lead to prompt and final dispositions, just as it would have if the prosecution had followed through with the agreement in this case.

The Court believed that plea agreements must be strictly enforced: “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Id.* at 262. Further, the Court explained that prosecutors have a duty to inform all future prosecutors of the existence of the plea agreement. *Id.* at 262.

Texas courts have also accepted the binding nature of agreements between a defendant and the State. The Court of Criminal Appeals recognizes that “in order to protect the constitutional rights of the defendant . . . if a defendant's plea is made based on a promise given by the State, the State must keep up its part of the agreement or the plea will be rendered involuntary.” *Bitterman v. State*, 180 S.W.3d 139, 141 (Tex. Crim. App. 2005). Texas courts recognize that “a plea bargain is a

contract between the state and the defendant.” *Moore v. State*, 295 S.W.3d 329, 331 (Tex. Crim. App. 2009). “As a contract, once both parties have entered knowingly and voluntarily into a plea bargain, they are bound by the terms of that agreement once it is accepted by the judge.” *Id.*

In interpreting and enforcing plea agreements, Texas courts generally apply contract principles. *See, e.g., Ex parte Moussazadeh*, 64 S.W.3d 404, 411-12 (Tex. Crim. App. 2001); *Ex Parte Cox*, 482 S.W.3d 112, 116 (Tex. Crim. App. 2016). When fairness requires, Texas courts require specific enforcement of the agreement. *See Ex parte Adkins*, 767 S.W.2d 809, 811 (Tex. Crim. App. 1989) (“As plea agreements should be followed the same as a contract under similar circumstances, we find that specific performance of the agreement, without an essential portion of the essence of the agreement, i.e., the affirmative finding, is an unacceptable remedy.”).

One such contractual principle, which has been applied in the plea bargain context, is the equitable contract remedy of promissory estoppel. “The requisites of promissory estoppel in Texas are: (1) a promise; (2) foreseeability of reliance thereon by the promisor; and (3) substantial reliance by the promisee to his detriment.” *Frost Crushed Stone Co., Inc. v. Odell Geer Const. Co., Inc.*, 110 S.W.3d 41, 44 (Tex. App.—Waco 2002). The Texas Court of Criminal appeals

applied the promissory estoppel framework in *Gibson v. State*, where the Court held specific performance was the only remedy to prevent a Due Process violation:

When, as in this cause, a guilty plea rests to any significant degree on a promise of the prosecutor, so that it can be said that the promise is part of the inducement or consideration for the plea, the due process clause of the Fourteenth Amendment requires that such promise be fulfilled. *Mabry v. Johnson*, 467 U.S. 504, 509, 104 S.Ct. 2543, 2547, 81 L.Ed.2d 437 (1984); *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971); *Ex parte Austin*, 746 S.W.2d 226, 227 (Tex.Cr.App.1988); see Westen, *A Constitutional Law of Remedies for Broken Plea Bargains*, 66 Calif.L.Rev. 471 n. 161 (1978). If for some reason the prosecutor does not carry out his side of the agreement, the defendant is entitled to have the agreement specifically performed or the plea withdrawn, whichever is more appropriate under the circumstances. *Santobello*, 404 U.S. at 263, 92 S.Ct. at 499; *Ex parte Adkins*, 767 S.W.2d 809, 810 (Tex.Cr.App.1989); *Shannon v. State*, 708 S.W.2d 850, 851 (Tex.Cr.App.1986). Under the circumstances of this case—appellant has already served a substantial portion of his sentence under the guilty plea—the only appropriate remedy is specific performance.

803 S.W.2d 316, 318 (Tex. Crim. App. 1991).

In this case, where the course of proceedings show that the Jefferson County District Attorney's Office was working with the United States Attorney's Office to resolve Mr. Walker's federal case,⁸ and where Mr. Walker relied upon the

⁸ See initial plea offer. CR at 87-88. The District Court omitted this initial offer from its findings. CR at 665-75.

representations of the District Attorney's Office when accepting the federal plea, Due Process required specific performance of the State's promise not to prosecute him. However, trial counsel failed to raise this issue during the pendency of the state proceedings.

B. The District Court erred in denying relief on the ineffective assistance of counsel claim.

1. Trial counsel was ineffective.

Had trial counsel sought specific performance of the plea agreement in federal court, which included the state's assurance that no state charges would be filed unless new evidence was uncovered, Due Process would have required that the state prosecution be dismissed. Once again, "[w]e apply general contract-law principles to determine the intended content of a plea agreement." *Ex parte De Leon*, 400 S.W.3d 83, 89 (Tex. Crim. App. 2013). "Specific performance is an equitable remedy that may be awarded upon a showing of breach of contract." *Stafford v. S. Vanity Magazine, Inc.*, 231 S.W.3d 530, 535 (Tex. App.—Dallas 2007, pet. denied). Promissory estoppel is another contractual principle which applies to this case.

"The requisites of promissory estoppel in Texas are: (1) a promise; (2) foreseeability of reliance thereon by the promisor; and (3) substantial reliance by the promisee to his detriment." *Frost Crushed Stone Co., Inc.*, 110 S.W.3d at 44 (citing

English v. Fischer, 660 S.W.2d 521, 524 (Tex.1983) and others). Mr. Walker can make the requisite showing that promissory estoppel applies. We know the State and Federal Governments were working together in resolving Mr. Walker's federal case. See CR at 86-89. Indeed, the initial plea offer from the federal prosecutors involved dismissal of federal charges in exchange for a guilty plea to a state misdemeanor charge. *Id.* Of course, that plea was rejected and, later, a second offer was made. Before Mr. Walker accepted the plea offer, his lawyer called the District Attorney, a party to these negotiations, to verify whether the District Attorney would file charges if the second federal plea offer was accepted. See CR at 60-64. The District Attorney told defense counsel, in no uncertain terms, that state charges would not be filed unless additional evidence was uncovered. CR at 62. This was (1) a promise (2) that carried with it foreseeable reliance, and (3) Mr. Walker relied on this promise to his detriment in accepting the second federal plea agreement.

“[W]hen a defendant, who has entered a negotiated plea of guilty, challenges the conviction and is successful, the appropriate remedy is specific performance of the plea, if possible. . .” *Ex parte De Leon*, 400 S.W.3d 83, 90 (Tex. Crim. App. 2013). Here specific performance was possible. Had counsel simply raised the issue before the District Court, Due Process would have required dismissal of the state charges.

Due Process would have required this result even though the plea agreement involved two separate cases, one at the federal level and a prospective case at the state level. In *De Leon*, the defendant pleaded guilty to multiple offenses based, in part, on the State's representation that if he accepted the State's plea bargain, then his brother would not be prosecuted. 400 S.W.3d at 84-85. Later, after the State incorrectly believed the defendant had breached the plea agreement by filing a notice of appeal, the defendant's brother was re-indicted. *Id.* at 87. The Court of Criminal Appeals held that the State had breached the plea agreement, and because specific performance was not possible in that case, the defendant was permitted to withdraw his plea. *Id.* at 90-91. The *De Leon* case is important because it instructs that we must first consider if specific performance is possible, despite that the plea agreement in that case related to separate criminal charges.

The Pennsylvania Supreme Court recently addressed this issue in a case eerily similar to Mr. Walkers, in *Commonwealth v. Cosby*, 252 A.3d 1092 (Pa. 2021). This case involved the prosecution of Bill Cosby for the sexual assault of Mrs. Constand. In 2005, after investigating the case, the District Attorney decided the case would be a difficult one, and that he would not seek criminal charges. The Pennsylvania Supreme Court describes what happened:

Seeking "some measure of justice" for Constand, D.A. Castor decided that the Commonwealth would decline to prosecute Cosby for the incident involving Constand, thereby allowing Cosby to be forced to testify in a subsequent civil action, under penalty of perjury, without the benefit of his Fifth Amendment privilege against self-incrimination. Unable to invoke any right not to testify in the civil proceedings, Cosby relied upon the district attorney's declination and proceeded to provide four sworn depositions. During those depositions, Cosby made several incriminating statements.

Id. at 1099-1100. However, much like Mr. Walker's case, "D.A. Castor's successors did not feel bound by his decision, and decided to prosecute Cosby notwithstanding that prior undertaking." *Id.* In addition to relaying this information to Mr. Crosby's attorneys, the District Attorney also made a press release about his decision, which noted "District Attorney Castor cautions all parties to this matter that he will reconsider this decision should the need arise." *Id.* at 1106. Just like Mr. Walker's case, the District Attorney told defense counsel that no charges would be pursued, and then issued a more equivocal statement to the press. The District Attorney's successor, however, proceeded with prosecution.

Mr. Crosby's attorneys raised the issue pretrial, arguing that the state should be precluded from prosecuting Crosby. *Id.* at 1108-1117. During proceedings related to the Due Process issue, the former District Attorney made conflicting statements about whether or not his agreement to not prosecute Crosby was binding on his successors. *Id.*, 1129-1130. The Pennsylvania Supreme Court decided that

the District Court did not err in finding that no formal non-prosecution agreement had been entered into, but noted “the question becomes whether, and under what circumstances, a prosecutor’s exercise of his or her charging discretion binds future prosecutors’ exercise of the same discretion.” *Id.* at 1131. The Court answered that “when a prosecutor makes an unconditional promise of non-prosecution, and when the defendant relies upon that guarantee to the detriment of his constitutional right not to testify, the principle of fundamental fairness that undergirds due process of law in our criminal justice system demands that the promise be enforced.” *Id.*

Quoting *Santobello*, the Court recognized that “when a plea rests in any significant degree on a promise or agreement by the prosecutor, so that it can be said to be part of the *inducement or consideration*, such promise must be fulfilled.” *Id.* at 1131. The Court also noted that “[t]he applicability of contract law to aspects of the criminal law has been recognized by the Supreme Court of the United States, *see Puckett v. United States*, 556 U.S. 129, 137, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009), by the United States Court of Appeals for the Third Circuit, *see McKeever v. Warden SCI-Graterford*, 486 F.3d 81, 86 (3d Cir. 2007), and by this Court. *See Commonwealth v. Martinez*, 637 Pa. 208, 147 A.3d 517, 531 (2016).” *Id.* at 1133. The Court explained that contract principles also apply to non-prosecution agreements. *Id.* The Court explained:

Considered together, these authorities obligate courts to hold prosecutors to their word, to enforce promises, to ensure that defendants' decisions are made with a full understanding of the circumstances, and to prevent fraudulent inducements of waivers of one or more constitutional rights. Prosecutors can be bound by their assurances or decisions under principles of contract law or by application of the fundamental fairness considerations that inform and undergird the due process of law. The law is clear that, based upon their unique role in the criminal justice system, prosecutors generally are bound by their assurances, particularly when defendants rely to their detriment upon those guarantees.

Id. at 1134.

The Court noted that “[n]umerous state and federal courts” agreed that “[w]hen a non-prosecution decision is conveyed in such a way, and when a defendant, having no indication to the contrary, detrimentally relies upon that decision, due process may warrant preclusion of the prosecution.” *Id.* at 1136. In the end, relying on the contractual principle of promissory estoppel, the Pennsylvania Supreme Court held that “[t]here is only one remedy that can completely restore Cosby to the status quo *ante*. He must be discharged, and any future prosecution on these particular charges must be barred.” *Id.* at 1146.

These same principles apply to Mr. Walker's case. Based on Mr. Maness's statement that he would not be pursuing state charges absent the discovery of new evidence, Mr. Walker waived numerous constitutional rights in federal court, including his right to remain silent and right to a jury trial. *See* CR at 25-31. Further,

he has already served his federal sentence. The only remedy for the Due Process violation in his case is to overturn his state conviction and bar any further prosecution related to this manner.

Of course, this issue was not raised prior to trial. Mr. Walker's attorney recognizes that he was aware of the factual basis of this claim prior to trial, and that he had no defense strategy in failing to raise this due process issue. Rather, his failure to raise the Due Process issue was simply an oversight. CR at 62, Affidavit of Mr. DeGuerin. This oversight cost Mr. Walker his strongest defense – that the prosecution in this case was barred by the United States Constitution. Mr. Walker can show deficient performance because his counsel's performance fell below an objective standard of professional norms, and he can show prejudice because there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 687. Had trial counsel not performed deficiently, his prosecution would have been barred by the Due Process clause and he would not have been tried or convicted.

2. The trial court abused its discretion in denying relief.

The District Court's findings of fact and conclusions of law contained multiple factual and legal errors. For this reason, Mr. Walker argues the District Court abused its discretion in denying relief.

First, after discussing Mr. Walker's pretrial writs of habeas corpus, both based on double jeopardy grounds, the District Court stated "[i]t is noted that applicant's current habeas ground, in actuality, appears to be yet another attempted end-run around the 'law of the case' separate sovereigns and dual sovereignty decisions cited above." CR at 666. This was an unreasonable conclusion. Although one of Mr. Walker's pretrial applications did include an allegation that the State and Federal Governments were working in concert to prosecute him, the legal basis of the pretrial applications were different from that in this proceeding. Indeed, Mr. DeGuerin recognized as much in his affidavit: "Although I litigated the dual sovereignty/Double Jeopardy issue on Mr. Walker's behalf, I neglected to raise the Due Process/detrimental reliance claim based on Mr. Maness's assurance. This was not strategy on my part, but an oversight." CR at 62. The fact that one the pretrial applications included the claim that the State and Federal Governments were working together, makes counsel's oversight more egregious. Recognizing this fact, counsel should have raised the Due Process issue *prior* to trial, as the factual basis of the two claims actually support each other.

Second, the District Court correctly noted that Mr. Walker had the “burden of proof to prove his habeas corpus allegations[,]”⁹ but the Court failed to identify that the burden was merely by a “preponderance of the evidence. . .” See *Ex parte Rains*, 555 S.W.2d at 478. The Court also made statements like “an applicant's self-serving claims, without supporting proof, is insufficient” and “[a]n applicant's sworn allegations alone are insufficient to prove an applicant's claims.” CR at 668-69. But Mr. Walker’s claims were not without supporting proof, and did not rely merely on sworn allegations. Instead, those claims were based upon affidavits of both the applicant and trial counsel, and other documentary evidence. CR at 24-88. And, one of the very cases cited by the District Court, *Ex parte Evans*, held that sworn testimony of the applicant himself is a sufficient basis for granting habeas relief. *Ex parte Evans*, 964 S.W.2d 643 (Tex. Crim. App. 1998).

The District Court’s findings also fail to consider a key piece of evidence, not refuted by the State, showing that the State and Federal Government were working in concert to resolve Mr. Walker’s federal case. Mr. Walker presented the District Court with the initial federal plea offer which stated the federal “government

⁹ CR at 668 (citing *Ex parte Rains*, 555 S. W.2d 478, 481 (Tex. Crim. App. 1977); *Ex parte Sandoval*, 508 S.W.3d 284, 286 (Tex. Crim. App. 2016) (citing *Ex parte Whisenant*, 443 S.W.3d 930, 932 (Tex. Crim. App. 2014)).

proposes that the case be resolved by a state misdemeanor plea. . .” *Id.* at 669. This is strong evidence showing that the sitting District Attorney was involved in the federal plea negotiations, despite the fact that he could not recall specific conversations with Mr. DeGuerin. The District Court, however, claimed “[t]he only items in the record regarding this new claim are the sworn affidavits of applicant and of Mr. DeGuerin, and some vague news articles.” *Id.* at 669.

The Court also appeared to deny relief based upon two factual determinations. First, that the standard federal plea agreement used in Mr. Walker’s case and his testimony during his federal rearrangement precluded a grant of relief. CR at 669-72. And second, “[w]hen the weight of former District Attorney Tom Maness’ affidavit is added to the plea documents from 2012 and applicant’s then-sworn testimony, and whom from many, many years of experience this Court has found to be a credible and truthful individual, the weight of the truth prevails and the scales tip in that favor. Conversely, the hollow and contradictory assertions from 2024 are hoisted high in the air on the opposite side of the scale, exposed for all to see.” CR at 672-73.

Discussing Mr. Maness’ affidavit first, it must be remembered that Maness’s affidavit failed to prove that he did not inform Mr. DeGuerin that State charges would not be forthcoming if Mr. Walker accepted the federal plea deal. Instead, Mr.

Maness had "no personal recollection of ever speaking with Mr. DeGuerin about any case during my tenure as the district attorney." CR at 629. He had "no personal recollection of the phone conversation referenced in either Mr. DeGuerin or Mr. Walker's affidavits." *Id.* at 630. However, he also had "no specific recollection of an interview with the press regarding this case, [but] it is possible that I made the comments reflected in the article." *Id.* If it is possible he spoke with the press, then it is also possible that he spoke with Mr. DeGuerin about the case, and his affidavit was insufficient to rebut the affidavits of Mr. Walker and Mr. DeGuerin.

Also, although Mr. Walker does not doubt that Mr. Maness is an Honorable man, it was improper for the District Court interject personal knowledge of facts not contained in the judicial record into this proceeding. CR at 673. "It is well established that a judge's personal knowledge of matters not contained in official judicial records of the court is not a proper matter for judicial notice." *Ex parte Rains*, 555 S.W.2d 478, 481 (Tex. Crim. App. 1977). This is especially so where Mr. Maness's affidavit failed to refute Mr. DeGuerin's factual assertion, and where there is no reason to suspect Mr. DeGuerin of impropriety. After all, he is one of the most respected lawyers in Texas.

Finally, it is true that the federal plea agreement contained a statement that "This plea of guilty ... is not the result of. ... promises other than those set forth in

this agreement." CR at 670 (emphasis in District Court order). But this language is required language during federal plea colloquies. See Fed. R. Crim. P. 11 ("Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement)."). This fact was never considered by the District Court, and, when this fact is considered, it makes sense why the federal plea agreement would have included this language.

As discussed below, in the face of conflicting evidence Mr. Walker argues it would have prudent for the District Court to hold the requested hearing in this matter. However, and in the alternative, Mr. Walker argues the District Court abused its discretion in denying his writ of habeas corpus.

II. DID THE DISTRICT COURT ERR IN DENYING MR. WALKER'S HABEAS APPLICATION WITHOUT HOLDING A HEARING OR OTHERWISE DEVELOPING THE RECORD TO RESOLVE THE CONFLICTS BETWEEN MR. WALKER'S EVIDENCE AND THAT PRESENTED BY THE STATE?

In his habeas application, Mr. Walker requested that the District Court hold a hearing to establish the factual basis of his claims. CR at 4, 22. Mr. Walker renewed this request the day before the District Court's findings were entered.¹⁰ The District

¹⁰ Counsel will file a request that the record be supplemented to include the motion for a hearing.

Court denied the request for a hearing. CR at 672-74. The District Court claimed Mr. Walker did not present “any extra-record evidence, other than the two affidavits and news articles, to support his ground for relief. Accordingly, no live evidentiary hearing is necessary.” CR at 672. As noted *supra*, this was false. Mr. Walker supported his claims not only with the affidavits and news articles, but also with a letter proving the Federal and State Government’s were working in concert on his case. CR at 86-88. The District Court also relied on Mr. Maness’s affidavit, which did not refute Mr. Walker’s claims. The District Court abused its discretion by failing to hold an evidentiary hearing.

Judge Cochran of the Court of Criminal Appeals explained that when judges are presented with competing affidavits, the proper course of action is to set the case for a hearing. “Trial judges who are confronted with contradictory affidavits, each reciting a plausible version of the events, ought to convene an evidentiary hearing to see and hear the witnesses and then make a factual decision based on an evaluation of their credibility.” *Manzi v. State*, 88 S.W.3d 240, 255 (Tex.Crim.App.2002) (Cochran, J., concurring).¹¹ This Court has followed this

¹¹ See also *Ex parte Franklin*, 310 S.W.3d 918, 922 (Tex. App.—Beaumont 2010, no pet.) (citing the concurrence in *Manzi* favorably in the context of a *Herrera* actual innocence claim).

admonition and reversed cases for further factual finding when necessary. In *Ex parte Arjona*, a case involving a claim of an involuntary plea, the Court reversed the district court's denial of relief and remanded for a hearing. 402 S.W.3d 312 (Tex. App.—Beaumont 2013, no pet.). In doing so, the Court noted “Article 11.072 does not require a hearing when the issues can be resolved without one.” *Id.* at 319. However, because of the conflicting nature of evidence before the district court, the Court held “that the applicant should be provided an opportunity to develop and present evidence at the hearing. Therefore, ‘to do substantial justice to the parties[,]’ [the Court] set aside the trial court's order denying the application and remand the case to the trial court for a hearing on the application for habeas corpus relief. *Id.* at 319-20.¹²

A review of the record shows that a hearing, or some additional fact finding, was necessary to establish the factual foundation of these claims. Specifically, a hearing would have allowed Court settle the following conflicts:

¹² In *Ex parte Cherry*, another § 11.072 case, the Court held that “[b]ased on the record before us, we conclude the trial court's findings and the factual development of the record are inadequate to permit us to determine the merits of Cherry's claims that his rights were violated by depriving him of his choice of paid counsel.” 232 S.W.3d 305, 308 (Tex. App.—Beaumont 2007, pet. ref'd). The Court concluded the property remedy was “to reverse and remand to allow the trial court to conduct another habeas hearing because, by virtue of a judge's retirement, the habeas court does not have personal knowledge of the prior proceedings, and the factual record presented for our review was insufficiently developed to include the essential facts necessary for appellate review.” *Id.*

1. **Whether Mr. Maness and Mr. DeGuerin had a conversation prior to the federal guilty plea, and the contents of that conversation?** Both Mr. Walker and Mr. DeGuerin recall a conversation between Mr. Maness and Mr. DeGuerin prior to Mr. Walker waiving his federal constitutional rights and pleading guilty.¹³ Importantly, Mr. Maness did not claim no conversation took place. Instead, he stated he has “no personal recollection of ever speaking with Mr. DeGuerin about any case during my tenure as the district attorney.” CR at 629. Mr. Maness repeats himself later in the affidavit, explaining “I have no personal recollection of the phone conversation referenced. . .” CR at 630. However, he also has “no specific recollection of an interview with the press regarding the case,” but we know he did speak with the press about his offices plans not to pursue charges. CR at 630, 85. Mr. Maness’s affidavit simply does not refute that of Mr. Walker or Mr. DeGuerin, and a hearing was necessary to determine whether a conversation took place, and the contents of that conversation.

2. **What involvement did the State have in the federal plea negotiations?** Mr. Maness states that he “was not involved in the federal investigation or

¹³ The State claimed that Mr. Walker and Mr. DeGuerin give no date for this conversation. CR at 12. This is incorrect. Mr. Walker stated that the plea negotiations began in June of 2012, and Mr. DeGuerin explains the conversation took place prior to Mr. Walker’s acceptance of the federal plea deal. CR at 61-64. This matches with the date the plea agreement was formally entered into, on July 17, 2012. CR at 25-31.

negotiations between the federal government and Mr. DeGuerin. . .” CR at 630. However, Mr. Walker has presented the Court with evidence proving that the initial plea offer in federal court involved dismissal of all the federal charges in exchange for a “state misdemeanor plea, civil forfeiture and other conditions.” CR at 87. It seems unlikely that a federal prosecutor would offer this type of plea agreement if the State and Federal Government were not working together to resolve a case. A hearing was necessary to develop the factual record in regards to the State’s involvement in federal plea negotiations.

3. **The Federal plea colloquy.** The District Court found that Mr. Walker’s federal plea agreement and plea colloquy foreclosed his current arguments. CR at 669-72. A hearing was necessary to develop the factual basis concerning the terms of the federal plea agreement, and whether the terms of that agreement necessarily excluded Mr. Walker’s reliance on Mr. Maness’s statements.
4. **Can trial counsel’s failure to raise the due process issue be seen as strategy?** Mr. DeGuerin told the Court that his failure to raise the “Due Process/detrimental reliance claim” was “not strategy on my part, but an oversight.” See *Affidavit Appendix F*. The State argued this failure could not have been deficient performance, and must have been strategic. CR at 124-25, 132. The State noted that Mr. Walker’s initial pretrial habeas application argued that the State and

Federal Governments were working in conjunction, and that this argument conflicts with his current arguments. The State was incorrect that these two arguments are "inconsistent." The idea that the State and Federal Governments were working together to resolve Mr. Walker's cases (as shown by the initial federal plea offer) makes it *more* likely that the State would have been involved in the federal plea agreements. This fact also establishes why it was reasonable for Mr. Walker to rely to his detriment on Mr. Maness's statements. Because the argument raised in the initial pretrial habeas application was *consistent* with the current argument, Mr. DeGuerin should have raised both arguments prior to trial. A hearing was necessary to develop the factual record for whether or not Mr. DeGuerin's failure can be seen as strategic.

This Court, in order "to do substantial justice to the parties" should remand the case to the trial court for a hearing on the application for habeas relief.

PRAYER

Mr. Walker respectfully requests that this honorable court remand the case to the lower district courts for a hearing on his application for writ of Habeas Corpus, affording him the opportunity to demonstrate the merits of his case. Alternatively, he asks that the district court's decision be reversed and relief granted.

REASON[S] FOR GRANTING THE PARTITION

The conflicted decisions concerns the Pennsylvania Supreme Court and the Ninth Court of Appeals of Beaumont, Texas. This case closely mirrors the Bill Cosby proceedings before the Pennsylvania Supreme Court, where the outcome markedly differed from that reached by the Ninth Circuit Court of Appeals in Mr. Walker's matter. (Refer to pages 20-24 in Calvin Walker's Brief), (*Commonwealth v. Cosby*, 252 A.3d 1092 (Pa.2021)).

Mr. Walker's ability to meet his burden of proof is contingent upon convening an evidentiary hearing to establish pertinent facts with all parties present for participation. Nevertheless, this request for a hearing was denied.

Mr. Walker acknowledges the necessity of demonstrating that reasonable jurists could consider the district court's evaluation of the Constitutional and Due Process claims to be debatable or erroneous.

As previously noted, when reasonable jurists are presented with conflicting affidavits—one from defense counsel, one from the defendant, and another from the District Attorney—the situation raises legitimate questions. The affidavit submitted by defense counsel, who remains actively engaged in legal practice and possesses a distinct recollection of events related to negotiations with the former District Attorney, stands opposed to the retired District Attorney's affidavit. The District Attorney, having been retired for thirteen years, "does not recollect" entering into an agreement with defense counsel or speaking with the media, despite evidence

in news articles suggesting otherwise. This discrepancy creates a credibility issue concerning the District Attorney, reasonably indicating that his position may warrant further scrutiny or may be subject to error.

As Judge Cochran of the Court of Criminal Appeals has explained, when judges are presented with competing affidavits, the proper course of action is to set the case for a hearing. Trial judges who are confronted with contradictory affidavits, each reciting a plausible version of the events, ought to convene an evidentiary hearing to see and hear the witnesses and make a factual decision based on an evaluation of their credibility. *Manzi v State*, 88S.W.3d 240,255 (Tex. Crim. App. 2002) (Cochran, J., concurring)

Calvin Gary Walker
April 2, 2026

Respectfully submitted,
Calvin Gary Walker
3710 Roland Road
Beaumont, TX. 77708
P. 337-244-0801
Calvinwalker5@outlook.com

Certificate of Service

I certify that a copy of this Brief on Appeal has been sent to Council on appeal by e-mail on April. 2, 2026.

Calvin Gary Walker

Certificate of Compliance

I certify that this Brief is 7,805 words according to the Microsoft Word count, with headings, quotations, and footnotes included, in which conforms with the limit found in Texas Rule of Appellate Procedures 9.4(i)(2)(C).

Calvin Gary Walker

Calvin Walker
April 2, 2026