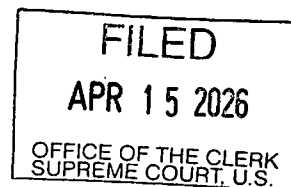


No. 25-7474

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

ROSS MASSEY — PETITIONER
(Your Name)

vs.

ERIS GUEPHERO, DIRECTOR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

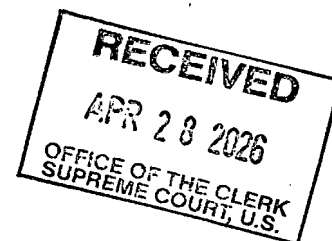
PETITION FOR WRIT OF CERTIORARI

ROSS MASSEY
(Your Name)

2661 F.M. 2054
(Address)

TENNESSEE COLONY, TEXAS 75884
(City, State, Zip Code)

(903) 928-2211
(Phone Number)



QUESTION(S) PRESENTED

WHETHER THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S REQUEST FOR A CERTIFICATE OF APPEALABILITY, AFTER PETITIONER PRESENTED "NEWLY AVAILABLE EVIDENCE" THAT PETITIONER'S SENTENCE HAD BEEN LAWFULLY DISCHARGED IN MAY OF 2011.

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ROSS MASSEY-- Petitioner

2661 F.M. 2054

TENNESSEE COLONY, TEXAS 75884

ERIC GUERRERO, DIRECTOR - Respondent

TEXAS DEPARTMENT OF CRIMINAL JUSTICE-INSTITUTIONAL DIVISION

JUSTINE ISABELLE CAEDO TAN - Attorney for Respondent

Assistant Attorney General

P.O. Box 12548-Capitol Station

Austin, Texas 78711-2248

RELATED CASES

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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 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 _____; 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☒ is unpublished.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 _____; 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☒ is unpublished.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 _____ 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 _____ court appears at Appendix _____ to the petition and is

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☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was See Appendix B.

☐ 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: January 20, 2026, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

XIV Amendment, US Constitution

Provides that: 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 any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Petitioner is challenging the statement from the Texas Department of Criminal Justice, that petitioner recieved the correct amount of good time credits from 8-31-2013 through 9-22-2022.

Petitioner is alleging that the Texas Department of Criminal Justice and the Texas Board of Pardons and Paroles are extending his sentence by applying sections of statutes that are not applicable to petitioner after his sentence was discharged, according to statutorily enacted laws, and that the statute enacted in 1977 was either amended or implicitly repealed by the enactment of the later enacted statute.

Petitioner is also challenging the Texas Department of Criminal Justice's authority to forfeit over 36 years of good time credits, years after petitioner's sentence had been lawfully discharged.

According to the Texas Department of Criminal Justice and the Texas Board of Pardons and Paroles, petitioner was released on Mandatory Supervision on May 13, 2011. Petitioner was arrested in Arkansas, on unrelated charges, and completed that sentence there on 3-24-2022. On 3-25-2022, petitioner was transfered from Arkansas to the Texas Department of Criminal Justice, where petitioner has been since that day.

On 8-13-2023, petitioner filed a state application for a Writ of Habeas Corpus. In that application, petitioner claimed that the Texas Department of Criminal Justice had extended petitioner's sentence, and that the Texas Department of Criminal Justice did not have the authority to deprive petitioner of over 36 years of earned good time, while in the Department of Criminal Justice..

The state habeas court recommended denying the application, concluding claims involving good time credits were not cognizable in habeas. The habeas court also issued findings of fact and conclusions of law that petitioner

must prove his actual innocence to receive habeas relief. On 10-11-2023, The Texas Court of Criminal Appeals denied petitioner's state habeas application without written order on the findings of the trial court and on the court's independent review of the record. Ex Parte Massey, No. WR-22, 085-03

Petitioner executed his federal petition for habeas corpus relief on 2-1-2024. The court initially time barred petitioner, however, petitioner moved for reconsideration and the court granted petitioner's motion, vacated its prior decision, and reopened the case. On 3-13-2025, the court denied all of petitioner's claims. Massey v. Guerrero, 2025 U.S. Dist. Lexis 53626. In addition, the court ordered that a certificate of appealability shall not issue in this case.

Petitioner then filed an application for certificate of appealability to the Fifth Circuit Court of Appeals. On 11-3-2025, the Fifth Circuit denied petitioner's request, stating that Massey has failed to make a "substantial showing" of the denial of a constitutional right. Massey v. Guerrero, 2025 U.S. App. Lexis 28746.

Petitioner then filed a motion for rehearing or reconsideration. The Fifth Circuit denied that request on 1-20-2026. Massey v. Guerrero, 2026 U.S. App. Lexis 1376

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 Appealability. 28 U.S.C. §2253(c)(1)

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 a denial of a constitutional right." §2253(c)(2) To make that showing, a habeas petitioner must demonstrate "that a reasonable jurist could debate whether... the petition should have been resolved in a different manner or 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)

AEDPA does not "require petitioner 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, at the COA stage, the only question is whether the "claim is reasonably debateable."

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 on 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 facts in light of the evidence presented in the state court proceeding. They certainly could..

This court's decision in *Preiser v. Roriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed. 2d 439(1973), established that when a prisoner "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or speedier release from that imprisonment, his sole federal remedy is a writ of habeas

corpus." Id. at 500 See also Wolff v. McDonnell, 418 U.S. 539, at *557

The Fifth Circuit Court of Appeals made clear in Teague v. Quarterman, 482 F.3d 769, 776-77 (5thCir.2007) that a prisoner in the Texas Department of Criminal Justice is entitled to protection under the Due Process Clause of the 14th Amendment, that involved good time or mandatory release.

The habeas court (trial court), in its brief at Answer for Prayer for Relief, and Findings of Fact and Conclusions of Law, (ECF No. 8-5 at 7-17) (#9) stated, "Claims involving good time credits are not cognizable in an application of habeas corpus." That is false, see Preiser supra. The habeas court also stated in several points in Findings of Fact and Conclusions of Law, that petitioner must prove his innocence to receive habeas relief, even though petitioner's habeas only involved good time credit issue that had nothing to do with guilt or innocence at trial. The Texas Court of Criminal Appeals did nothing to correct any of these false statements in Findings of Fact and Conclusions of Law, therefore accepting them all as true. Once the Texas Court of Criminal Appeals accepted that petitioner's habeas was not cognizable in a habeas corpus, then their decision was based on false "Findings of Fact and Conclusions of Law." Thereby, contrary to prior decisions by this court. Preiser, supra.

The Texas Court of Criminal Appeals denied petitioner's habeas corpus without written opinion. Since the only evidence in the records was petitioner's claims and the trial court's brief; The Texas Court of Appeals' decision was based on the trial court recommending denial of my habeas, because good time claims are not cognizable in habeas corpus. (ECF No. 8-5 at 7-17); also Findings of Fact and Conclusions of Law (#9)

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)

The Texas Court of Criminal Appeals' decision is CLEARLY an unreasonable determination of CLEARLY established federal law, as determined by the Supreme Court of The United States according to Preiser, Wolff, and the Fifth Circuit's

Teague, supra.

The Federal District Court in its opinion at (order), said, "To the extent that the Antiterrorism and Effective Death Penalty Act (AEDPA) applies, Petitioner has failed to show that the state habeas corpus rejection of his claims was objectively unreasonable. In addition, the court concludes all of petitioner's claims fail on the merits."

The Federal Court allowed the attorney for the state (The Attorney General) to introduce into the records, numerous statutes that are ex post facto, when applied to petitioner. For example, Texas Department of Criminal Justice Administrative Directive 4.80(IV)(B), that contains false information when applied to petitioner; and the court introduced evidence into the record itself, that contains ex post facto statutes, and the statutes that are not applicable to petitioner's sentence at that time; such as the (T.D.C.J. Offender Handbook) The court acknowledged the ex post facto statutes, but did nothing to correct the falsehood, even going further to apply them while citing from the "Handbook". In addition, after acknowledging the ex post facto issues, the court turns around and cites statutes that were no longer applicable to petitioner's sentence. The court denied petitioner's extended sentence claim, citing Article 42.18, section 15 of the Texas Code of Criminal Procedure. Petitioner does ^{not} disagree with what 42.18§15 says, only when this section of statute is applicable; 42.18§15 becomes moot once a prisoner has discharged their sentence. Therefore, once petitioner had discharged his sentence, according to 42.18§16, Texas Code of Criminal Procedure, as of May 2011, 42.18§15 was no longer applicable.

The court denied petitioner's Good Time Credits from 1987-2011, by citing ^{art.} art. 6181-1§4 of the Tex. Civ. Stat. Ann.; which provides, in part, "Good conduct time applies only to eligibility for parole or mandatory supervision release as provided in Section 15, Article 42.12, Code of Criminal Procedure, In 1965, as amended shall not otherwise affect the inmate's term..."

What the Federal District Court has done, is to pick one specific statute from 1977 (6181-1§4) and apply that statute to petitioner, even though the Texas legislature enacted 42.18§16, "THE TEXAS PAROLE AND MANDATORY SUPERVISION LAW" in 1985, which applies to this sentence, that began on 8-18-1987. The court has mistakenly applied 2 section of statute, that is only applicable if a prisoner's sentence has not been lawfully discharged.

While T.D.C.J. has told the court I was released to Mandatory Supervision, according to 6181-1§4, my sentence was actually discharged under the later enacted statute 42.18§16, that does not stipulate for me to receive a Final Certificate of Discharge, "is subject to the amount of good time petitioner earned while in the Department of Corrections."

Petitioner presented 42.18§16, to the Fifth Circuit in his request for a COA. Petitioner would argue that this "Newly available statute" the federal district court's decision, is clearly debateable, and that the Fifth Circuit's decision to deny petitioner a COA was in error.

Petitioner would ask this court to consider a scenario/question. Does petitioner have to personally know what every section of statute in the Texas Code of Criminal Procedure says before it applies to him? Or, does, as petitioner believes, that once a section of statutes' obligations are completed for his sentence to be discharged, then the sentence is discharged. Otherwise, T.D.C.J. could simply imprison a person forever because they are poor and cannot afford an attorney, or ignorant of the law. However, that HAS happened in petitioner's case. I ask this court to correct this miscarriage of justice.

Petitioner is not contesting the legality of his conviction or the validity of his initial sentence. Rather, petitioner is contesting the manner in which his sentence is being executed by the Texas Department of Criminal Justice-Institutional Division, and the Pardons and Paroles division.

Petitioner is contesting which sections of statute are applicable to petitioner as of May 2011. According to Texas Code of Criminal Procedure,

42.18§16, effective date 1985, petitioner's sentence was discharged in May 2011.

The Federal District Court cited 42.18§15 to deny petitioner's extended sentence claim. That section of statute is only applicable to a prisoner until his sentence has been lawfully discharged. In his affidavit, Charley Valdez, (T.D.C.J. official) states that based on Texas Gov't Code §508.023(b), I do not receive street time. However, according to Tex.Gov't. Code §311.025 (a)(b), the later enacted statute prevails. Also according to §311.031(d), if a code conflicts with a statute, the statute controls.

Petitioner would ask this court to consider that no state or federal court has ever ruled as to the applicability of Texas Code of Criminal Procedure Article 42.18§16. I would also ask this court to consider that no state or federal has ruled that this statute does not apply to petitioner. Nor, has any state or federal court held that petitioner's sentence was not discharged according to 42.18§16

Petitioner would also ask this court to consider that if they do not rule on the the applicability of 42.18§16, not only will petitioner never know if his sentence was lawfully discharged as of May 2011, he will remain falsely imprisoned according to the statutes that are applicable to petitioner. This court should also realize that any other prisoner, that was sentenced from the effective date of 42.18§16, until 9-1-1987, that completed the obligations required to receive a final certificate of discharge, that has been returned to prison, are, or have been, falsely imprisoned.

I would also point out to this court that 42.18§16, DOES NOT leave any discretion to the parole board on when to issue a final certificate of discharge. It is a command. The only purpose for the parole board regarding 42.18§16, is adding 3 sets of numbers; the amount of time spent in prison prior to release, the amount of good time credits earned, while in the Department, prior to release, and to any days required while on parole.

No decisions, Administrative only.

Petitioner would also ask this court to consider that the Texas Court of Criminal Appeals, the Federal District Courts in Texas, and the Fifth Circuit have had the opportunity for almost (40) forty years to correct this miscarriage of justice, involving poor and ignorant prisoners being falsely imprisoned in the Texas Department of Criminal Justice.

Because of the scope and far reaching consequences of the failure of lower courts to address the applicability of 42.18§16, petitioner would ask this court to do so. The issue is debateable in the District Court and, petitioner believes, the Fifth Circuit's denial of a COA was in error.

Petitioner would also ask this court to take into consideration three statements from prior Justices of the Supreme Court. Honorable Justice Douglas said: "The lesson to be learned is that courts cannot blithely defer to the supposed expertise of prison officials when it comes to the constitutional rights of inmates." Wolff at 599.

Honorable Justice White stated: "We granted the petition for writ of certiorari in this case because it raises important questions concerning the administration of a state prison." Wolff at 542. Also by the court in Wolff at Headnotes[1]: The united States Supreme Court will grant certiorari to consider important questions concerning the administration of a state prison. I believe this statement to be a promise to those of us who are poor and ignorant of the law. I ask this court, this day, to fulfill this promise made over (50) fifty years ago and grant certiorari.

CONCLUSION

Petitioner prays this Court will grant Certiorari and clarify the applicability of 42.18E16.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ross Massey

Ross Massey #00468822

Date: March 30, 2026