No. 25-938

IN THE

Supreme Court of the United States

JAMES GARFIELD BROADNAX,

Petitioner,

v.

TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED

Petitioner James Garfield Broadnax was convicted of capital murder and sentenced to death for fatally shooting and robbing two people. During jury selection, Broadnax challenged several of the State's peremptory strikes under *Batson v. Kentucky*, 476 U.S. 79 (1986). The trial court rejected most of Broadnax's challenges but reseated one of the prospective jurors the State had struck. Broadnax unsuccessfully pursued his *Batson* challenges on direct appeal, in his federal habeas proceeding, and in his first subsequent state habeas proceeding.

The questions presented are:

1. Whether this Court has jurisdiction to consider the Texas Court of Criminal Appeals's postcard denial (without a written order) of Broadnax's request that the lower court reconsider "on its own motion" the *Batson* claims from his first subsequent state habeas application?

2. Is this Court's review warranted when this is Broadnax's fourth petition for certiorari review of his *Batson* claims, and this Court has already rejected the bulk of the arguments Broadnax repeats here?

3. Whether jury-selection evidence *from Broadnax's co-defendant's trial*, where the jury was composed of six White, four Black, and two Hispanic individuals, is relevant and supports Broadnax's *Batson* claims?

4. Whether declarations from three excluded Black venire members, obtained 16 years after trial—stating they would have been fair and impartial jurors—is relevant to the *Batson* analysis?

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INTRODUCTION

Petitioner James Garfield Broadnax is scheduled to be executed on April 30, 2026. Broadnax does not dispute that he and his cousin Demarius Cummings fatally shot two men who were unlucky enough to cross Broadnax's path in a parking lot in downtown Garland, Texas, while Broadnax was on the prowl for someone to rob. Instead, he seeks to relitigate *for a fourth time before this Court* his claims that the prosecution in his case used preemptory challenges in a racially discriminatory manner. The state trial court, the Texas Court of Criminal Appeals (TCCA) on direct appeal, the federal courts (including this Court) on federal habeas, and the TCCA on a subsequent state habeas application correctly rejected or dismissed those claims.

Broadnax's first subsequent state habeas application alleged that evidence he received since 2016 in his post-conviction discovery reviews of the District Attorney's trial files supported his previous claims the State had violated *Batson* by striking six Black jurors. The TCCA determined Broadnax's first subsequent state habeas claim did not satisfy the statutory framework to excuse procedural default under Article 11.071, Section 5 of the Texas Code of Criminal Procedure—Texas's abuse-of-the-writ bar—and dismissed the subsequent habeas application without considering the merits. This Court denied certiorari review from the first subsequent state habeas claim two years ago in No. 23-248. *Broadnax v. Texas,* 144 S. Ct. 2700 (2024).

Texas law flatly does not allow motions for rehearing of the TCCA's denial or dismissal of a habeas application.

Tex. R. App. P. 79.2(d) ("A motion for rehearing an order that denies habeas corpus relief or dismisses a habeas corpus application under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed."). The same provision, however, indicates that the TCCA "may on its own initiative reconsider the case." *Id.* To circumvent the prohibition against motions for rehearing of a habeas ruling, Broadnax filed a "Suggestion to Reconsider on the Court's Own Motion" the TCCA's dismissal of his *Batson* claims from his first subsequent state habeas application (hereinafter, "Suggestion to Reconsider"), seeking reconsideration because (a) in his co-defendant's capital murder trial where *half* the seated jurors were minority individuals, a member of the prosecution team notated, along with other information, the race and gender of each prospective juror on a voir-dire seating chart and (b) Broadnax obtained three declarations of *Batson*-challenged jurors from his trial attesting that they would have been fair and impartial jurors and were in favor of the death penalty. The TCCA denied Broadnax's Suggestion to Reconsider in a docket entry and postcard to the parties without issuing an order. (Pet. at 1a–7a).

Broadnax now seeks certiorari review of the TCCA's decision not to reconsider his *Batson* claims. *This is Broadnax's fourth petition for certiorari relating to his Batson claims—from his state direct appeal, federal habeas proceeding, first subsequent state habeas proceeding, and now his Suggestion to Reconsider.* This Court should deny Broadnax's petition because the Court lacks jurisdiction and the *Batson* claims are still wholly meritless.

BACKGROUND AND PROCEDURAL HISTORY

I. The Capital Murder and Trial

During the early morning hours of June 19, 2008, Broadnax and his cousin Demarius Cummings fatally shot and robbed Stephen Swan and Matthew Butler outside their music recording studio. (RR45: 67–72, 81, 86–88, 107). Shortly after his arrest, Broadnax gave several media interviews during which he confessed in graphic detail to fatally shooting Swan and Butler, robbing them, and driving away in Swan's vehicle. (RR45: 117, 270–71; RR46: 216, 219).

During voir dire, Broadnax challenged the prosecution's exercise of peremptory strikes against seven prospective Black jurors and one prospective Hispanic juror under *Batson*. (RR38: 9, 14, 21, 26, 44, 51, 69, 71). The trial court denied Broadnax's *Batson* challenges. (RR38: 13, 19, 26, 30, 51, 68, 71, 79). Although the trial court later granted Broadnax's motion to reinstate one potential Black juror whom the prosecution struck, it did not find that the prosecution intentionally discriminated on the basis of race or its race-neutral reasons for striking the juror were pretextual. (*See* RR42: 34–35). The trial started ten days later. (RR45: 1). Broadnax was convicted of capital murder for the murder of Stephen Swan in the course of a robbery and, pursuant to the jury's answers to the statutory special issues, sentenced to death. (CR: 698–99).

II. Procedural History

The TCCA affirmed Broadnax's conviction and sentence on direct appeal. *Broadnax v. State*, No. AP-76,207,

2011 WL 6225399 (Tex. Crim. App. Dec. 14, 2011) (not designated for publication). Broadnax's direct appeal included a claim that the State's strikes of six prospective Black jurors violated *Batson*. *Id.* at *2–3. The TCCA conducted the following analysis:

> The primary reason asserted by the State for striking Venire Members [S.M.], [C.R.], and [B.J.] was that they were among those venire members who circled a specific answer to a specific question on the jury questionnaire. The question asked, "With reference to the death penalty, which of the following statements best represents your feelings?" [S.M.], [C.R.], and [B.J.] chose the answer, "Although I do not believe that the death penalty ever ought to be invoked, as long as the law provides for it, I could assess it under the proper circumstances." A venire member's responses to a written questionnaire can be valid grounds for a peremptory challenge. Here, the State struck all venire members who answered this way. Because [Broadnax] has not shown that these three minority venire members were treated differently from non-minority venire members, he has not demonstrated that the prosecutor's stated reason was a pretext for discrimination.
>
> The State said that it struck Venire Members [M.V] and [D.M.] for affirmatively stating on the jury questionnaire that they opposed the death penalty. Here, too, the State struck all venire members who answered this way. Therefore,

> [Broadnax] has again failed to demonstrate that the prosecutor's stated reason was a pretext for discrimination.
>
> The remaining two minority venire members of whose strikes [Broadnax] complains provided unique and distinguishing answers during the *voir dire* process.
>
> Venire Member [A.L.] said that a defendant's voluntary intoxication would preclude her from assessing the death penalty. Contrary to [Broadnax's] assertions, such a definitive position was not taken by a fellow venire member whom the State did not strike.
>
> Venire Member [A.R., a Hispanic juror,] made inconsistent and contradictory statements about her beliefs on capital punishment, including, at one point, stating that she had religious and moral convictions against the death penalty. [Broadnax] fails to cite any similarly situated venire member whom the State did not strike.
>
> Therefore, comparative analysis does not support [Broadnax's] contention that the trial court's rulings were erroneous.

Id. at *3 (footnotes omitted). Broadnax sought certiorari review of his *Batson* claims, but this Court denied his petition. *Broadnax v. Texas*, 568 U.S. 828 (2012).

Without raising any *Batson* claims, Broadnax filed an original state habeas application. The TCCA denied

relief, and this Court denied review. *Ex parte Broadnax*, No. WR-81,573-01, 2015 WL 2452758, at *1 (Tex. Crim. App. May 20, 2015) (per curiam) (not designated for publication); *Broadnax v. Texas*, 577 U.S. 842 (2015).

Broadnax filed an amended federal habeas petition in district court that included his *Batson* claims. *See Broadnax v. Davis*, No. 3:15-CV-1758-N, 2019 WL 3302840, at *36–43 (N.D. Tex. July 23, 2019). During that proceeding, the State provided Broadnax's counsel with access to its trial files. In support of the *Batson* claims, Broadnax proffered items he received from the State's trial files, including an Excel spreadsheet noting each qualified juror's race, with the names of Black jurors in bold. *See* Pet. at 18.

The district court rejected Broadnax's assertion that the State failed to exercise peremptory challenges on prospective White jurors with similar voir dire responses as stricken Black jurors:

> Given the extensive length and detail in the juror questionnaires, any similarity between some answers [by stricken minority venire members] and the answers [by non-stricken White venire members] is hardly surprising – or conclusive of anything. . . .
>
> Unlike the venire members against whom the prosecution exercised peremptory strikes, however, none of [the non-stricken White] venire members gave any questionnaire or voir dire answers indicating they were opposed to the death penalty . . . . For equal protection

> purposes, none of these venire members were similarly situated with the venire members against whom the prosecution exercised challenged strikes.

Broadnax, 2019 WL 3302840, at *43.

The district court further rejected Broadnax's allegation that the State's spreadsheet specifying the Black jurors evidenced a sinister motive:

> [M]ore significantly, the [spreadsheet] now presented by Broadnax does nothing more than indicate that the Dallas County District Attorney's Office made a point of memorializing the ethnicity and gender of the remaining members of the jury venire prior to the exercise of its peremptory challenges. Having twice been criticized by the United States Supreme Court for its exercise of racially discriminatory peremptory strikes in *Miller-El v. Dretke*, 545 U.S. 231 (2005), and *Miller-El v. Cockrell*, 537 U.S. 322 (2003), it would have been professionally irresponsible for the Dallas County District Attorney's Office (in 2009) to have failed to identify the members of the remaining jury venire who were members of a protected class and against whom it might have been preparing to exercise a peremptory challenge. . . . No sinister motive can be inferred rationally simply because the prosecution noted the race and gender of every remaining member of the jury venire or highlighted those for whom that office would need to be prepared to offer

> sound, race-neutral, reasons in the event the prosecution chose to exercise a peremptory strike against such an individual and the defense raised a *Batson* objection.

Id. at *43 n.73. The district court denied all relief and denied a certificate of appealability. *Id.* at *55.

The Fifth Circuit granted a certificate of appealability on one issue—whether the district court properly refused to consider the new evidence from the District Attorney's trial files on Broadnax's *Batson* claims. In its decision, the circuit court expanded on the district court's comparative juror analysis:

> Broadnax counters that the state did not strike several white veniremembers who answered their questionnaires similarly to minority veniremembers who were struck. **But with the exception of Juror [A.L.], every *Batson*-challenged veniremember who was excluded from the jury indicated he or she was not in favor of the death penalty and/or believed the death penalty ought not be invoked. The state struck all who answered this way, a fact Broadnax glosses over**. . . .
>
> Juror [A.L.] was the sole minority veniremember who expressed support for the death penalty and did not select option three. However, [A.L] indicated that she would be "automatically prevented" from imposing the death penalty if the defendant was using drugs or alcohol at the time of the offense. As the state knew

> that intoxication would be a core component of the defense theory, [A.L.'s] answer was highly prejudicial to the state's case. Moreover, several of [A.L.'s] explanations for her answers revealed mixed feelings about the death penalty. While one other veniremember considered intoxication to be a mitigating circumstance, Broadnax musters no other potential juror who believed that intoxication *automatically* rendered a defendant ineligible for the death penalty. . . . The district court correctly concluded that the state courts did not unreasonably apply *Batson* in rejecting this claim.

Broadnax v. Lumpkin, 987 F.3d 400, 411–12 (5th Cir. 2021) (emphasis added). The Fifth Circuit likewise concluded the spreadsheet was no smoking gun:

> As the district court noted, the spreadsheet "does nothing more than indicate that the Dallas County District Attorney's Office made a point of memorializing the ethnicity and gender of the remaining members of the jury venire prior to the exercise of its peremptory challenges." *Batson* claims are evaluated under a three-step process . . . . The spreadsheet arguably enhances Broadnax's argument at the first step, and it may be relevant to the third.
>
> **But the prosecution was still required to—and did—provide racially neutral reasons for each of the strikes. The spreadsheet alone is no smoking gun; it fails to render all those reasons merely pretextual.** Moreover,

> the district court observed that the Dallas County District Attorney's Office has twice been criticized by the United States Supreme Court for the use of racially discriminatory peremptory strikes. *Broadnax*, 2019 WL 3302840, at *43 n.73. **The office would have had considerable motivation to identify which jury venire members belonged to a protected class when preparing to defend its use of peremptory challenges.**

Id. at 409–10 (citation omitted and emphasis added). The Fifth Circuit denied all relief. *Id.* at 404, 416. This Court then denied Broadnax's petition for writ of certiorari on his *Batson* issues. *Broadnax v. Lumpkin,* 142 S. Ct. 859 (2022).

In 2023, Broadnax filed a first subsequent state habeas application, raising his *Batson* claims. The TCCA dismissed the first subsequent habeas application, concluding Broadnax failed to satisfy the requirements of Article 11.071, Section 5. *Ex parte Broadnax*, No. WR-81,573-02, 2023 WL 3855947, at *1 (Tex. Crim. App. June 7, 2023) (per curiam) (not designated for publication). The TCCA dismissed Broadnax's application "as an abuse of the writ without considering the merits of the claims." *Id.* *See* Tex. Code Crim. Proc. art. 11.071, § 5(c). By explicitly indicating it had not considered the merits, the TCCA left no doubt as to the independent, state-law character of its dismissal. *See*, *e.g.*, *Balentine v. Thaler*, 626 F.3d 842, 857 (5th Cir. 2010) (recognizing that Article 11.701, Section 5 is an adequate state-law ground for rejecting a claim); *Matchett v. Dretke*, 380 F.3d 844, 848 (5th Cir. 2004) ("Texas' abuse-of-the-writ rule is ordinarily an 'adequate

and independent' procedural ground on which to base a procedural default ruling").

On June 24, 2024, this Court denied Broadnax's petition for certiorari on his *Batson* claims from his first subsequent state habeas application. *Broadnax,* 144 S. Ct. 2700. The decision stated in full: "Petition for writ of certiorari to the Court of Criminal Appeals of Texas denied. Justice Sotomayor and Justice Jackson would reverse the judgment." *Id.*

In 2025, Broadnax filed two pleadings in the TCCA: (1) a second subsequent state habeas application and (2) his Suggestion to Reconsider. The TCCA dismissed the second subsequent habeas application without reviewing the merits of the claims raised, concluding Broadnax failed to satisfy the requirements of Article 11.071, Section 5.[1] *Ex parte Broadnax*, No. WR-81,573-03, 2025 WL 3095921, at *1 (Tex. Crim. App. Nov. 6, 2025) (per curiam) (not designated for publication). On the same day, the TCCA denied Broadnax's Suggestion to Reconsider without entering a written order in the case. *Ex parte Broadnax*, No. WR-81,573-02 (Tex. Crim. App. Nov. 6, 2025) (postcard denying suggestion to reconsider on court's own motion). (Pet. at 1a–7a).

On December 17, 2025, the state trial court scheduled Broadnax's execution for April 30, 2026. (Pet. at 8a–10a). Broadnax filed his instant petition for certiorari—his fourth petition on his *Batson* claims—along with a corresponding Application for Stay of Execution, No. 25A899.

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1. Broadnax has a petition for writ of certiorari pending on the TCCA's dismissal of his second subsequent habeas application, along with a motion for stay of execution, in Nos. 25-939 and 25A900.

REASONS FOR DENYING THE PETITION

Broadnax's petition seeks review of the TCCA's postcard denial of his suggestion that the lower court reconsider, on its own initiative, the *Batson* claims from his first subsequent state habeas application. Two years ago, this Court denied Broadnax's petition for certiorari on his first subsequent state habeas application. *Broadnax,* 144 S. Ct. 2700.

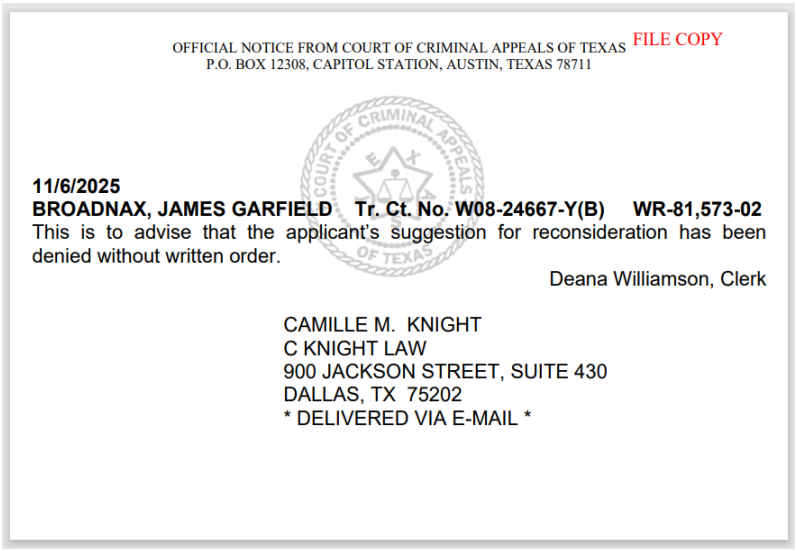
Texas procedural rules explicitly bar a motion for rehearing on any order dismissing a habeas application (or denying relief in state habeas proceedings) under Texas Code of Criminal Procedure, Article 11.071. Tex. R. App. P. 79.2(d). In 2023, the TCCA dismissed Broadnax's first subsequent habeas application, holding Broadnax failed to satisfy the requirements of Article 11.071, Section 5. *Broadnax*, 2023 WL 3855947, at *1. Despite the bar on habeas motions for rehearing, the Texas appellate procedural rules allow the TCCA to reconsider a habeas case "on its own initiative." Tex. R. App. P. 79.2(d).

Thus, there is no mechanism in Texas for the TCCA to rehear, on Broadnax's motion, the dismissal of his subsequent habeas application. Regardless, the TCCA's denial of reconsideration is purely a state-law matter, which deprives this Court of jurisdiction and renders the TCCA's denial of reconsideration unassailable on certiorari. But even if jurisdiction existed, no compelling reason exists for review.

I. This Court Lacks Jurisdiction

Broadnax seeks review of the lower court's postcard denial of reconsideration of his *Batson* claims. (*See* Pet. at 1a–7a). This Court lacks jurisdiction for two primary reasons—the postcard denial is not an appealable final decision and it encompasses only a state-law, not federal-law, matter.

The decision he appeals is a one-word docket entry on the TCCA's docket: "Denied." The TCCA did not enter a written order, but instead notified the parties of the ruling via an electronic postcard:



OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

11/6/2025
BROADNAX, JAMES GARFIELD Tr. Ct. No. W08-24667-Y(B) WR-81,573-02
This is to advise that the applicant's suggestion for reconsideration has been denied without written order.

Deana Williamson, Clerk

CAMILLE M. KNIGHT
C KNIGHT LAW
900 JACKSON STREET, SUITE 430
DALLAS, TX 75202
* DELIVERED VIA E-MAIL *

The post-card denial is not an appealable, final judgment. The pleading Broadnax appeals from—his Suggestion to Reconsider—is not a proper filing under state law, as reflected in the pretense of its title. It is

titled a "suggestion" because "[a] motion for rehearing an order that . . . dismisses a habeas corpus application . . . *may not be filed*" in Texas, although the TCCA "may *on its own initiative* reconsider [a] case." *See* Tex. R. App. P. 79.2(d) (emphasis added). Texas procedural rules do not allow for a motion for rehearing or a "suggestion" the TCCA reconsider. Broadnax's non-conformity with state law deprives this Court of jurisdiction. That is because, "[t]o lay the foundation for such right of review[,] it is necessary to bring the Federal question in some *proper* manner to the consideration of the state court whose judgment it is sought to review." *Chesapeake & Ohio Ry. Co. v. McDonald*, 214 U.S. 191, 192 (1909) (emphasis added). But "if this is not done, the Federal question cannot be originated by assignments of error in this [C]ourt." *Id.* at 192–93. Because Broadnax's Suggestion to Reconsider does not comply with state law, this Court's jurisdiction is absent.

If the use of an improper state-law vehicle does not deprive the Court of jurisdiction, the lower court's consideration of only state law does. The TCCA's election whether to rehear a habeas case on its own accord is wholly a matter of state law—it enjoys the unfettered prerogative to reopen long-dormant habeas proceedings. But that discretion is exercised only "under the most extraordinary" or "compelling circumstances." *Ex parte Moreno*, 245 S.W.3d 419, 427–28 (Tex. Crim. App. 2008). There is no federal law involved—and no federal law consideration means no federal jurisdiction. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016) ("This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment 'if that judgment rests on a state law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's

decision.'" (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989))).

Broadnax alleges this Court has jurisdiction because the TCCA regularly responds to requests for reconsideration despite Texas Rule of Appellate Procedure 79.2(d), and therefore the postcard denial amounts to a final judgment or decree giving rise to jurisdiction under 28 U.S.C. § 1257(a). (Pet. at 27). In support, he cites *Emerson* v. *Johnson*, 243 F.3d 931, 932, 934–35 (5th Cir. 2001) for its determination that Emerson's suggestion for reconsideration of his state habeas application tolled the limitations period for filing his federal habeas proceeding under the Antiterrorism and Effective Death Penalty Act. (Pet. at 27).

But the postcard denial lacks the character of the appealable judgments or petitions for rehearing referenced in this Court's rules. *See* Sup. Ct. R. 13.1 (referencing "entry of a judgment" and "review of a judgment of a lower state court that is subject to discretionary review"), 13.3 (referencing "entry of the judgment or order" with a petition for rehearing timely filed, untimely petition for rehearing entertained by the lower court, or where the lower court *sua sponte* considers rehearing). Broadnax contends this Court has jurisdiction because in order to deny his motion for rehearing, the TCCA would have first *sua sponte* considered his claim, and this Court's Rule 13 allows review of a denial of rehearing following a court's *sua sponte* consideration. (Pet. at 27–28). (*See* Sup. Ct. R. 13.3). Broadnax misapplies Rule 13.

Rule 13.3 provides that the time for filing a petition for certiorari runs from the date of entry of the order

sought to be reviewed; or, "if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the petition for writ of certiorari . . . runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment." Sup. Ct. R. 13.3. Thus, the filing deadline runs from a date other than the initial entry of judgment if (1) a petition for rehearing is timely filed, (2) the lower court entertains an untimely petition for rehearing, or (3) the lower court *sua sponte* considers rehearing. *See id.* Because Texas law bars a petition for rehearing, a timely one could not be filed nor an untimely one entertained. Also, the lower court did not *sua sponte* consider rehearing: it denied Broadnax's suggestion that it *sua sponte* reconsider. The TCCA did not reconsider anything. Accordingly, the *sua sponte* circumstance set out in Rule 13.3 did not exist in this case.

Broadnax points to no direct support for this Court exercising jurisdiction over his appeal of the TCCA's postcard denial of his Suggestion to Reconsider. The circumstances in *Emerson* are distinguishable. (*See* Pet. at 27). The *Emerson* decision hinged not on whether the order from the suggestion to reconsider was a final judgment but instead on federal principals of liberally allowing tolling to encourage state-habeas exhaustion of claims before seeking federal-habeas review. *See Emerson,* 243 F.3d at 935.

Broadnax further contends the TCCA's postcard denial was based on substantive analysis of federal law, incorporating in stair-step fashion his ill-fated argument in his last *Batson*-related petition for certiorari review (in No. 23-248), that this Court has jurisdiction based on *Ex*

parte Campbell, 226 S.W.3d 418 (Tex. Crim. App. 2007). (Pet. at 28–29).

The single-word ruling—"denied"—in no way conjures that the TCCA *sua sponte* considered his claim or reached any federal issue. Broadnax contends the silence surrounding "denied" somehow equals federal law consideration. But there is no presumption that a state court passes on a federal question in the post-conviction context. There is a "predicate" to finding federal law consideration—that "the decision" of the state court "fairly appear[s] to rest primarily on federal law or to be interwoven with federal law." *Coleman v. Thompson*, 501 U.S. 722, 735 (1991). "In those cases in which it does not fairly appear that the state court rested its decision primarily on federal grounds," like here, where the TCCA's postcard simply said the Suggestion to Reconsider was "denied," "it is simply not true that the 'most reasonable explanation' is that the state judgment rested on federal grounds." *See id.* at 737. Indeed, where there is no "clear indication that a state court rested its decision on federal law, a federal court's task will not be difficult." *Id.* at 739–40. It is not difficult here—the word "denied" expresses no hint of federal law consideration.[2]

Like in his prior *Batson*-related petition in No. 23-248, Broadnax's misreading of *Campbell* "undebatably

2. Even when a motion for rehearing may be entertained by the TCCA—not unlike the inherently state law authority by which the TCCA may consider state habeas decisions on its own initiative—there is no inkling of federal law consideration. *See* Tex. R. App. P. 79.2(c) ("A motion for rehearing . . . may be grounded only on substantial intervening circumstances or other significant circumstances which are specified in the motion.").

fails" because it is well-settled the TCCA can dismiss a subsequent habeas application for failing to overcome Article 11.071, Section 5(a)(1)'s previously-available legal-or-factual requirement alone without reaching the federal constitutional issue alleged in the application.[3] *See Buntion v. Lumpkin*, 31 F.4th 952, 962–63 (5th Cir. 2022); *Rocha v. Thaler*, 626 F.3d 815, 835 (5th Cir. 2010) (stating that if the TCCA's "decision rests on availability, the procedural bar is intact"). This Court has already rejected Broadnax's misinterpretation of *Cambell*[4] when it denied his petition for certiorari in No. 23-248. *See Broadnax,* 144 S. Ct. 2700.

In sum, the denial of Broadnax's improper, procedurally-barred motion for rehearing on adequate and independent state-law grounds—i.e., the TCCA's unfettered discretion on whether to reconsider the previously dismissed, procedurally-barred habeas claim on its own initiative—strips this Court of jurisdiction.

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3. To receive review of his *Batson* claims in his first subsequent state habeas application, Broadnax needed to establish that his claims could not have been presented previously in a habeas application because the factual bases for the claims were unavailable at the time a previous application was filed. *See* Tex. Code Crim. Proc. art. 11.071, § 5(a)(1). If the TCCA determines an applicant has not satisfied the statutory requirements for bypassing the procedural bar, it must issue an order dismissing the application as an abuse of the writ. *Id.* § 5(c).

4. Broadnax had argued the two-step process described in *Campbell* means that, in every Texas subsequent habeas proceeding, the TCCA reaches the merits by examining two elements: first, the prior factual and/or legal availability of the claim; and second, whether the facts alleged establish a prima face showing of a constitutional violation. Pet. for Writ of Cert. at 8, 27–28, *Broadnax v. Texas,* 144 S. Ct. 2700 (No. 23-248).

II. Broadnax's *Batson* Claims are Meritless

There is no compelling reason for further review of Broadnax's *Batson* claims. Since this Court previously denied review of his *Batson* claims two years ago, Broadnax has rallied additional alleged support in the form of (1) a courtroom seating chart from his co-defendant's voir dire[5] with an unknown prosecutor's handwritten marginalia identifying the race and gender of the prospective jurors and (2) declarations Broadnax obtained from three excluded Black venire members from his own trial. But this additional information does not alter analysis of the *Batson* claims.

The TCCA may have denied Broadnax's Suggestion to Reconsider for the same reasons it dismissed his first subsequent habeas application without considering the merits of his claims, *see Broadnax*, 2023 WL 3855947, at *1, such as that (a) Broadnax's *Batson* claims were procedurally barred because they were raised and rejected on direct appeal, (b) Broadnax failed to show the *Batson* claims could not have been raised in his initial state habeas application because the factual basis for those claims was unavailable, or (c) Broadnax failed to exercise reasonable diligence during his initial habeas proceeding by not filing a discovery motion or attempting to subpoena the State's voir dire records, when he had sought and subpoenaed other records from the State's trial files. *See*

5. The State did not seek the death penalty in the capital murder case of Broadnax's co-defendant, Demarius Cummings. The jury found Cummings guilty of capital murder for the shooting death of Stephen Swan in the course of a robbery, and the trial court automatically sentenced Cummings to life in prison without parole. *See* Tex. Penal Code § 12.31(a)(2).

Brief in Opposition at 9–10, *Broadnax v. Texas,* 144 S. Ct. 2700 (No. 23-248).

Regardless, the State exercised peremptory strikes in Broadnax's trial on the minority jurors based on their responses on the written questionnaire and during individual voir dire—not based on race. Broadnax's alleged new evidence of a seating chart from the co-defendant's trial and declarations from three excluded jurors does not overcome the valid, non-discriminatory reasons for the strikes or show pretext. Every state and federal court, including this Court, has reviewed the State's strikes and denied *Batson* relief. *See, e.g., Broadnax,* 987 F.3d at 411–12 (noting that, with the exception of one juror who was struck for a unique answer about an offender's drug use, every *Batson*-challenged venireperson indicated they opposed the death penalty or it should not be invoked, and the State struck every juror, regardless of race, who answered this way). Simply put, five of the six excluded Black jurors in Broadnax's case were not in favor of the death penalty and/or believed it should never be invoked.

Four of the six excluded Black jurors responded "No" to a question on page one of the questionnaire, "Are you in favor of the death penalty?" The question looked like this:

Are you in favor of the death penalty? [ ] YES [✓] NO Please explain your answer. _____

No non-stricken prospective jurors responded this way.

Three of the six excluded Black jurors circled the following response on page one of their questionnaire as the closest choice to their own feelings regarding the death penalty: "*Although I do not believe that the death penalty*

ever ought to be invoked, as long as the law provides for it, I could assess it under the proper set of circumstances" (emphasis added). The question and answer choices were as follows:

With reference to the death penalty, which of the following statements best represents your feelings? **(Circle only one).**

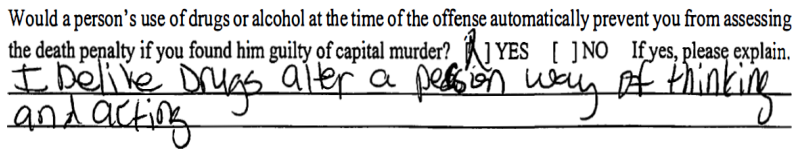
1. I believe that the death penalty is appropriate in all murder cases.
2. I believe that the death penalty is appropriate in some murder cases, and I could return a verdict in a proper case which assessed the death penalty.
3. Although I do not believe that the death penalty ever ought to be invoked, as long as the law provides for it, I could assess it under the proper set of circumstances.
4. I believe that the death penalty is appropriate in some murder cases, but I could never return a verdict which assessed the death penalty.
5. I could never, under any circumstances, return a verdict which assessed the death penalty.

Six total venire persons in the 47-person panel circled response "number three" above, and the State exercised peremptory strikes on all six (three were White, and three were Black). (RR38: 8, 30, 35–36, 83–84).

These acceptable, race-neutral reasons for exercising a peremptory strike—grounded in opposition to the death penalty—are unassailable. Broadnax entirely disregards these primary, distinguishing reasons for the State's strikes in his analysis and his instant petition, repeatedly skewing the record. (Pet. at 21–22 (indicating the State struck C.R. because he was concerned about wrongful convictions and believed in rehabilitation, and White jurors with the same responses were not struck, but failing to mention that C.R.'s questionnaire includes responses he *was not in favor of the death penalty* and *he did not believe the death penalty should ever be invoked* (RR55:

C.R. questionnaire)); Pet. at 24 (falsely claiming the State's reason it struck D.M.—because he was not in favor of the death penalty—was pretextual, even though when D.M. was asked directly on his questionnaire, *"Are you in favor of the death penalty," he responded, "No,"* adding: You never know what caused the individual to perform whatever act they did. Every individual will change in the essence of time.") (RR57: D.M. questionnaire)). *See Broadnax*, 987 F.3d at 411 (noting Broadnax glosses over the fact all but one challenged Black juror indicated on their written questionnaire that they were not in favor of or did not believe a death sentence should be given, and the State struck all jurors—regardless of race—with the same answers).

Also, two of the six excluded Black jurors indicated on their questionnaire that an offender's drug use during an offense would automatically prevent them from assessing a death sentence (RR38: 15, 47); no other jurors responded similarly. This question and response was as follows on A.L.'s questionnaire:


Would a person's use of drugs or alcohol at the time of the offense automatically prevent you from assessing the death penalty if you found him guilty of capital murder? [X] YES [ ] NO If yes, please explain.
I Belive Drugs alter a persons way of thinking and action

(RR57: A.L. questionnaire).[6]

6. Broadnax does not mention this response in his discussion of A.L. in his petition, instead focusing on A.L.'s feelings about the death penalty. (Pet. at 22–24). During voir dire, the State knew Broadnax's alleged drug use during the offense was a key defensive theory in this case. (RR38: 47–48).

The breakdown of these responses was as follows:

***Batson*-Challenged Black Venire Members**	**On written questionnaire, to the question, "Are you in favor of the death penalty?" Answered, "No"**	**Selected response on questionnaire that included: *"I do not believe that the death penalty ever ought to be invoked"***	**Indicated on questionnaire that defendant being on drugs at time of offense would automatically prevent them from assessing a death sentence**
S.M.		✓	
M.V.	✓		✓
A.R.	✓		
C.R.	✓	✓	
A.L.			✓
B.J.	✓	✓	
D.M.	✓		

Before individual voir dire, prospective jurors in Broadnax's case completed lengthy, 18-page questionnaires. (RR3: 5–6). Each person's race was indicated on the first page of their questionnaire. Thus, the parties were aware of each juror's race as documented in the trial records. *See Broadnax,* 987 F.3d at 409 ("The spreadsheet offered in federal court reflects the prosecutors' awareness of the race of prospective jurors."). The presiding trial judge assigned two retired judges to conduct individual voir dire with 130 prospective jurors, over a nearly eight-week

period. (RR7; RR9–RR11; RR13–RR37; RR38: 6). Each party was allowed to question a juror for up to 40 minutes. (RR38: 6). The trial court and the parties qualified a panel of 47 prospective jurors. (RR38: 6).

At a hearing on July 20, 2009, the parties exercised their peremptory challenges on the qualified panelists. (RR38: 7–83). The court overruled Broadnax's *Batson* objections to the challenged Black jurors. (RR38: 13, 19, 30, 51, 68, 71, 79). The presiding judge, however, ordered briefing and a second hearing on July 30, 2009 to reconsider Broadnax's *Batson* objection to the State's strike of R.P., a prospective Black juror, and the trial court reinstated R.P. as a juror.[7] (RR42: 5). The court found the State's strike was not racially motivated, but indicated it was reinstating R.P. on the jury because there were no Black jurors selected and a disproportionate number of Black venire members had been struck. (RR42: 34–35). On direct appeal, the TCCA held the trial court erroneously sustained the *Batson* objection as to R.P. and seated him on the jury. *Broadnax*, 2011 WL 6225399, at *4.

The federal district court concluded the reasons given by the prosecution for peremptorily striking each minority juror "all constituted racially-neutral, objectively verifiable, record-based[ ] reasons for a prosecutorial peremptory strike" and characterized the *Batson* complaints as "refuted by the record and without arguable

7. The State sought to strike R.P. because (1) he indicated during individual voir dire that he was not in favor of the death penalty; (2) unlike any other prospective juror, he spontaneously used the term "jury nullification" during individual voir dire; and (3) he was previously a foreman on two juries, one of which returned an acquittal for murder. (RR38: 53, 56–59, 62–65).

legal merit." *Broadnax,* 2019 WL 3302840, at *41, *43, *48. The court relied on the prospective jurors' questionnaire answers that they were not in favor of the death penalty or it should never be invoked. *Id.* at *41–42, *41 n.65, *42 n.71, *67–69. The court also concluded the State provided valid, race-neutral reasons justifying its strike of A.L., including that she marked a response on her questionnaire that a person's use of drugs or alcohol during an offense would automatically prevent her from assessing the death penalty.[8] *Id.* at *42, *42 n.72.

Broadnax contends the voir dire seating chart from Cummings's trial (Pet. at 17) undermines the State's explanation in his case that the Excel spreadsheet (Pet. at 18), listing the race and gender of jurors, along with other information, was created to defend against Broadnax's *Batson* objections and instead shows that the State used jurors' race to make race-based strikes. (Pet. at 19–21). But Broadnax neglects to tell this Court that the *co-defendant's seated jury was composed of fifty percent minority jurors—six White, four Black, and two Hispanic individuals.* Records in the case show that each

8. In his petition, Broadnax critiques the State for not explaining during the strike hearing why it mattered that A.L. had a prior deferred adjudication theft-by-check prosecution when it accepted a non-minority juror with a DWI charge. (Pet. at 24). But everyone in the courtroom would have understood the prosecutor's refence. Texas law prohibits a person convicted of a misdemeanor theft from serving on a jury; such individuals are subject to challenges for cause. Tex. Code Crim. Proc. art. 35.16(a)(2). During the strike hearing, the prosecutor said: "[A.L.] has also been placed on probation for a theft by check. We had seemed to be following a pattern that we were not accepting jurors that had been in that situation before, but, nevertheless, appears she was on there." (RR38: 49).

side exercised 10 peremptory challenges. Although there is no record of which party—State or defense—exercised peremptory challenges on which individuals, of the total 20 individuals struck, 16 were White, two were Black, one was Hispanic, and one was Asian. These numbers alone and the diversity of the seated jury show there was no prima facie case of race-discrimination in Cummings's trial. The seating chart from Cummings's case is not illustrative of purposeful race discrimination in his trial, much less in Broadnax's trial, nor does it supplant the State's valid, race-neutral reasons for its strikes in Broadnax's case or show a pretext for discrimination. *See Broadnax,* 987 F.3d at 410 (holding the spreadsheet failed to render the State's racially neutral reasons for its strikes "merely pretextual"). If anything, the co-defendant's voir dire chart, which resulted in a seated jury of fifty-percent minority individuals, proves the exact opposite of Broadnax's proposition: regardless of any notations of the jurors' race, the State did not engage in race discrimination.

The voir dire chart from Cummings's trial does not refute or undermine the State's explanation that the Excel spreadsheet in Broadnax's case was created to defend against Broadnax's *Batson* objections. The exact date of the Excel spreadsheet's creation is unknown. But because the records in context show the spreadsheet was emailed by a trial prosecutor to the State's appellate prosecutor (who had not participated in voir dire), the State has always contended it was likely created to prepare for the *Batson* hearing pertaining to R.P. and for the appellate attorney to prepare briefing ordered by the trial judge.[9]

9. Broadnax's *Batson* objections were initially overruled at the July 20, 2009 strike hearing. The trial judge later informed the parties he was reconsidering the *Batson* objection relating to R.P.

(Pet. at 19–20). On the Excel spreadsheet, the State did not bold the name of the Hispanic juror it exercised a peremptory strike on—which further proves the spreadsheet was not used to select individuals to strike.

Neither prospective Hispanic juror's name is in bold type on the Excel spreadsheet. (Pet. at 18). The State exercised a strike against one, A.R. (RR38: 21). Broadnax exercised a strike against the other, E.O. (RR38: 82–83). Broadnax asserted a *Batson* objection to the State's strike of A.R. (RR38: 21). Had the State bolded any names on the Excel spreadsheet before the July 20, 2009 strike hearing, A.R.'s name would presumably also have been bolded, to prepare for the expected *Batson* objection on *any* minority juror. That A.R.'s name is not in bold type thus weighs in favor of a conclusion that the names of the Black jurors were not bolded before the strike hearing, but rather when the list was sent to the appellate prosecutor tasked with preparing briefing prior to the later, separate *Batson* hearing on R.P. [10]

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and ordered the parties to submit briefing. (*See* CR3: 542–58). On July 22, 2009, one of the trial prosecutors in this case emailed an appellate prosecutor, transmitting two Excel spreadsheets, including the one at issue. State's Mot. to Dismiss Broadnax's Amended Subsequent Appl. for Writ of Habeas Corpus, Ex. A., W08-24667-Y(B) (Texas Crim. App. May 31, 2023). The email to the appellate prosecutor explained that an attached spreadsheet showed "the names of the African American jurors on the 'qualified pool' of 47." *Id*. It is not surprising, then, that the names of the Black jurors were emphasized in bold type, for the appellate prosecutor's reference. The appellate prosecutor filed the State's briefing on R.P. on July 27, 2009. (CR3: 550–58). The presiding trial judge held the second *Batson* hearing regarding R.P. on July 30, 2009 and seated him on the jury. (RR42: 1, 35).

10. Without any factual basis, Brodnax falsely tells this Court that the only reason the State did not strike Hispanic juror E.O.

Even if the State made the spreadsheet to prepare for the first strike hearing, that fact alone far from proves race discrimination. As in all death penalty cases, the prosecutors were required to prepare extensively, rallying the details, to be ready to defend against the expected *Batson* objections that no doubt would be made in a death penalty case. The State had to be prepared to respond with the reasons for its strikes, knowledge of the racial makeup of the whole panel and of particular jurors, and with a comparative juror analysis, contrasting the responses of minority versus non-minority jurors and accepted versus challenged jurors. (*See* RR38: 83–84 (explaining to the trial court that the State exercised a preemptory challenge on every prospective juror, regardless of race, who circled response "number three" regarding their feelings on the death penalty on their questionnaire and naming those jurors)). And the State had the monumental task of compiling this information for 130 jurors who were questioned over a seven-week period and who completed 2,340 pages of questionnaires—with no existing reporter's record to assist, only prosecutors'

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was because it had exhausted its peremptory challenges. (Pet. at 5) ("In fact, the only qualified non-White juror whom the State did not strike was a Hispanic juror whom the State could not strike because it had exhausted its peremptory strikes.") This is untrue. Before the court reached E.O. in the 47-person panel, 12 jurors were seated. (RR38: 82). The parties then had one peremptory strike each to exercise while seating two alternate jurors. (RR38: 82–83). Both parties accepted the first juror in the alternate pool, B.F. (considered juror number 13 or the first alternate). (RR38: 82). *The State next accepted E.O.* (the Hispanic juror in question). (RR38: 82) (*prosecutor Handley stating, "We accept."*). Broadnax then struck E.O., and the State exercised its alternate-pool strike on the next juror, G.P. (RR38: 82–83). Accordingly, the record is very clear the State had a peremptory challenge available to strike E.O. but did not.

notes and the questionnaires. An accurate and complete response to a *Batson* objection cannot be pulled out of thin air on the spot. Under such circumstances, it is no surprise that the State would utilize charts summarizing the data. *See United States v. Barnette*, 644 F.3d 192, 211 (4th Cir. 2011) (accepting that prosecutors' notations of race and gender on cover of juror questionnaires were for "quick access to information about each juror and also helped them deal with any potential *Batson* challenges"). The Excel spreadsheet not only contained the race of the jurors, but also their names, gender, qualified panel juror number, original juror number, and their response from the written questionnaires regarding their feelings on the death penalty. (Pet. at 18). The complained-of spreadsheet was one of several data summaries and charts pertaining to voir dire provided to Broadnax's counsel in discovery during his federal habeas proceeding.

Broadnax's arguments regarding Cummings's voir dire evidence a lack of understanding of courtroom procedure for jury selection in a non-death penalty case. Broadnax contends there would have been no need for the State to note the prospective jurors' race during Cummings's voir dire because there were no challenges to peremptory strikes and no *Batson* hearing was held. (Pet. at 20). But hindsight is 20/20: the State could not have known there would not be challenges until the time it asserted its strikes.

Cummings's non-death penalty voir dire differed significantly from Broadnax's voir dire and took place in one afternoon. (RR3: 7–170, *State* v. *Cummings,* No. F08-24666-Y). In Cummings's case, the trial court allowed each party one hour to speak to and question the entire

71-person venire panel. (RR3: 7, *State* v. *Cummings,* No. F08-24666-Y). The parties and the trial court then resolved the challenges for cause. (RR3: 140–50, *State* v. *Cummings,* No. F08-24666-Y). The court instructed the parties that the strike range for the panel was through juror number 55, with an alternate panel of jurors 56, 58, and 59, and the court recessed for the parties to prepare their strike lists. (RR3: 150–51, *State* v. *Cummings,* No. F08-24666-Y (with the judge instructing the parties, "Go as fast as you can. It's 4:30")). After factoring in the parties' strikes, the trial court read the names of the seated jurors to the parties outside the presence of the panel and inquired if either party had any objections; neither did. (RR3: 153–54, *State* v. *Cummings,* No. F08-24666-Y). Had Cummings objected to the State's peremptory challenges based on *Batson*, the trial court would have required the State to respond immediately while the full panel was present in the courthouse. There would not have been a recess to prepare for a *Batson* hearing on another date. But because there were no objections by either party, the trial judge, in open court, called the names of the seated jurors, dismissed the remaining prospective jurors, gave the seated jury preliminary instructions, and dismissed the jury for the day. (RR3: 154–169, *State* v. *Cummings,* No. F08-24666-Y).

This Court should wholly disregard the declarations Broadnax collected from prospective jurors 16 years after voir dire. He alleges the declarations prove the State's reasons for its strikes were pretextual (Pet. at 22–25), but the State's sound, race-neutral reasons for its strikes, *supra* at 20–23, speak for themselves. *Batson* determinations are made on jurors' statements during voir dire, not on their statements 16 years later. These jurors

were not struck based on their race, and any suggestion Broadnax made to them otherwise in obtaining their declarations is utterly abhorrent. (*See* Pet. at 11 ("The jurors were troubled to learn of the racial notations on the spreadsheet, *and by the fact that the State allowed race to inappropriately influence the jury selection process*.") (emphasis added); Pet. at 26 (citing A.L.'s statement in her declaration that "the prosecution had apparently considered me to be a less desirable juror because I am black," and citing C.R.'s statement in his declaration that he was "upset that race had played a part in who was part of the jury")).

The bulk of Broadnax's *Batson* arguments are duplicative of complaints this Court rejected two years ago in denying his petition for certiorari in No. 23-248, and this Court can readily reject these again. These concern: the Excel spreadsheet (Pet. at 2, 7–8, 12); a prosecutor's notes on prospective juror C.R.'s questionnaire (Pet. at 3, 8, 12–13, 22); alleged disparate questioning (Pet. at 2, 5, 13); racial disparity in the jury statistics[11] (Pet. at 14); the historical record of *Batson* violations in Dallas County[12]

11. The Fifth Circuit in this case noted that bare statistics are not the "be-all end-all," and the more powerful evidence is a side-by-side comparison of the stricken Black jurors to the non-stricken jurors. *Broadnax*, 987 F.3d at 412 (*citing Chamberlin v. Fisher*, 885 F.3d 832, 840 (5th Cir. 2018) (en banc) and *Miller-El v. Dretke*, 545 U.S. 231, 241 (2005)). The Fifth Circuit determined that the federal district court "thoroughly conducted side-by-side analysis of the state courts' determinations and correctly concluded that *Batson* was not unreasonably applied." *Id.*

12. Regarding the historical record, Broadnax incorrectly states the TCCA "granted relief" on Robertson's *Batson* claims in *Ex parte Robertson*, 603 S.W.3d 427 (Tex. Crim. App. 2020). (Pet.

(Pet. at 14–16); the prosecutor's reference to C.R.'s voir dire comment, "I see my son in this room," while giving reasons for the strike (Pet. at 22); alleged disparate treatment[13] (Pet. at 5, 13, 21, 23–24); and the six factors from *Flowers v. Mississippi,* 588 U.S. 284 (2019) (Pet. at 4, 11–16). These foundations of Broadnax's *Batson* claims have been soundly rejected by the following courts over the past fifteen years:

> Criminal District Court No. 7, Dallas County, Texas, 2009 (trial)
>
> Texas Court of Criminal Appeals, 2011 (direct appeal)[14]
>
> U.S. Supreme Court, 2012 (petition for certiorari on direct appeal)[15]
>
> U.S. District Court for the Northern District of Texas, 2019 (federal habeas)[16]

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at 15). In 2020, the TCCA remanded Robertson's *Batson* claims to the trial court for fact finding, *Robertson*, 603 S.W.3d at 428, and the claims remain pending there. No relief has been recommended by the trial court or granted by the TCCA. *See Ex parte Robertson,* W89-85961-L(A) (Crim. Dist. Ct. No. 5, Dallas County, Texas).

13. Regarding a side-by-side comparison of jurors, the federal district court concluded "Broadnax failed to identify any white jurors against whom the prosecution failed to exercise a peremptory strike who were genuinely similarly situated in terms of their questionnaire answers and voir dire testimony to those whom the prosecution struck peremptorily." *Broadnax,* 2019 WL 3302840, at *48.

14. *Broadnax,* 2011 WL 6225399.

15. *Broadnax,* 568 U.S. 828.

16. *Broadnax,* 2019 WL 3302840.

Fifth Circuit, 2021 (federal habeas)[17]

U.S. Supreme Court, 2022 (petition for certiorari on federal habeas)[18]

Texas Court of Criminal Appeals, 2023 (first subsequent state habeas)[19]

U.S. Supreme Court, 2024 (petition for certiorari on first subsequent state habeas)[20]

Texas Court of Criminal Appeals, 2025 (Suggestion to Reconsider)[21]

Broadnax's repeated claims that the State invoked unfair racial biases throughout his trial (Pet. at 6) are unfounded. He contends the State used evidence, including his rap lyrics, to prove he was part of a "Black gang," but this distorts the record. Extensive evidence, including Broadnax's self-identification, proved he associated with a gang called the Gangster Disciples. (RR49: 83–133; SX 6, 7, 9, 18, 131-I, 131-J, 504–505, 553). Discussions occurred at trial about the distinction between and references in evidence to the "Gangster Disciples" versus the "Black Gangster Disciples," an associated group (RR49: 90–93, 97), but the State nowhere emphasized that Broadnax was

17. *Broadnax,* 987 F.3d 400.

18. *Broadnax,* 142 S. Ct. 859.

19. *Broadnax*, 2023 WL 3855947.

20. *Broadnax,* 144 S. Ct. 2700.

21. *Broadnax*, No. WR-81,573-02 (Nov. 6, 2025 docket entry).

part of a "Black gang." References in closing arguments to Broadnax being a predator had to do with his extremely violent acts, including the fact that he shot two men who were already down execution style in the head—not his race. The prosecutor's proper opening argument referenced what the evidence would show in Broadnax's recorded media interview—in Broadnax's own words (not the prosecutor's)—that he and Cummings decided to go to Garland, Texas "where the rich white folks live" to commit a robbery. (RR45: 50). These references, plucked without context and distorting the record, misrepresent the State's case.

There is no reason for this Court to expend its limited resources on this case. This situation lacks any of the usual compelling reasons for review. *See* Sup. Ct. R. 10(a)–(c). There is no circuit or state-court-of-last-resort conflict; there is no reason for this Court to exercise its supervisory power; and the state court did not reach the federal issue, much less decide it in a conflicting manner. *See id.* The State of Texas asks this Court to deny certiorari review.

CONCLUSION

Respondent respectfully asks this Court to deny Broadnax's petition.

Respectfully submitted,

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