

26-5665

ORIGINAL

No. _____

JUN 02 2026
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Adrian Aguilar — PETITIONER
(Your Name)

vs.

Eric Guerrero, Dir., TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Adrian Aguilar
(Your Name)

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

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

(936) 295-9126
(Phone Number)

QUESTION(S) PRESENTED

QUESTION No. 1

Whether the court of appeals should have issued a Certificate of Appealability on Petitioner's Issue that the district court erred when it failed to consider and address whether the 1-year limitation period commenced under Title 28 U.S.C., Section 2244(d)(1)(D) on the date that Petitioner learned of the factual predicate for the claims on the date that he received the affidavit of the witness and suppressed Video-Tape recorded statement that provided evidence of Petitioner's innocence?

QUESTION No. 2

Whether the court of appeals should have issued a Certificate of Appealability on Petitioner's Issue that the district court erred when it fail to consider and address Petitioner's federal habeas petition on a complete and adequate record that was absent a Video-Tape recorded state that had been suppressed by The State that should have been compared to or against the affidavit of a witness and trial counsel for truthfulness, credibility and reliability that was probative and material to the decision delivered by the district court?

QUESTION No. 3

Whether the court of appeals should have issued a Certificate of Appealability on Petitioner's Issue that the district court erred when it accorded deference to the affidavit of trial counsel that had been rejected by the Texas Court of Criminal Appeals as credible and reliable when that court did not incorporate the convicting court's findings of fact & conclusions of law in the Action Taken by that court?

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: Elizabeth A. Goettert, Assisatant Attorney General/State of Texas; Adrian Aguilar, and Eric Guerrero, Director, Texas Department of Criminal Justice-Correctional Institutions Division.

RELATED CASES

Aguilar v. State, 2017 Tex.App.LEXIS 8124 (Tex.App. 1st Dist. Aug. 24, 2017).

Ex Parte Aguilar, 2021 Tex.Crim.App.Unpub.LEXIS 809 (Tex.Cr.App. June 16, 2021). Denied March 15, 2023.

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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 March 02, 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: March 27, 2026, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

Title 28 U.S.C., Section 2253(c)(1)(A); Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from- the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court...

Title 28 U.S.C, Section 2244(d)(1)(D); A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of- the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT OF THE CASE

This is a federal habeas proceeding before the United States District Court for Th Southern District of Texas - Houston Division pursuant to Title 28 U.S.C., Section 2254 et seq., in Case No. #4323-CV-01418, Styled: Adrian Aguilar v. Bobby Lumpkin, Director, Texas Department of Criminal Justice-Correctional Institutions Division.

On July 03, 2025, the district court entered an Amended Memorandum & Order that (1) dismissed Petitioner's federal habeas petition as time-barred under the provisions of Title 28 U.S.C., Section 2244(d)(1) et seq., and (2) denied Petitioner's Ineffective Assistance of Counsel claim on the merits, The district court did not consider and address Petitioner's claim that the State suppressed evidence favorably to the Petitioner. (Appendix B). As part of the Amended Memorandum & Order the district court sua sponte issued an order denying a certificate of appealability. (COA). (Appendix B).

Before the district court Petitioner asserted that (1) the State suppressed evidence favorable to the defense in violation of Brady v. Maryland, 84 S.Ct. 1194 (1963), that consisted of a Video-Tape recoded statement made by George Aguilar that exculpated him from the commission of the charged offense; (2) he was deprived of his right to effective assistance of counsel under Strickland v. Washington, 104 S.Ct. 2052 (1984), because trial counsel fail to call George Aguilar as a witness that would have supported an Alibi Defense; and (3) the he was actually

innocent of the offense charged because newly discovered evidence consisting of both the Video-Tape recorded statement and affidavit made by George Aguilar proved that he did not commit the offense for which he was convicted.

Before the district court Petitioner argued that his federal habeas petition was not time-barred under the provisions of Section 2244(d)(1) because (1) he was entitled to the statutory tolling exception under Section 2244(d)(1)(D) arguing that the 1-year limitation period commenced on the date that he became aware of the factual predicate that made the basis for his claims which was the date that he received the affidavit from George Aguilar, and which he learned about the Video-Tape recorded statement made by George Aguilar; and (2) newly discovered evidence showed that he was actually innocent of the offense charged.

Petitioner argued that under *Rivas v. Fischer*, 687 F.3d 514 (2nd Cir. 2012), the determination of the date on which the factual predicate for a habeas claim is first discovered is a "fact-specific" inquiry which required the district court to analyze the factual bases of each claim and to determine when the facts underlying the claim were known, or could with due diligence have been discovered. Petitioner furthered, that a due diligence inquiry concerning the 1-year limitation period by the district court should take into account the fact he was limited in exercising diligence by his physical confinement. *Moore v. Knight*, 368 F.3d 936 (7th Cir. 2004). Petitioner asserted

that the triggering date for the commencement of the 1-year limitation period was on November 05, 2020, the date he received the affidavit made by George Aguilar. Cf., *Moore v. Knight*, 368 F.3d 936 (7th Cir. 2004); the 1-year limitation period did not commence until the date Moore received the police reports, and *Daniels v. Uchman*, 421 F.3d 490, 492 (7th Cir. 2005); petitioner's federal habeas action occurred when a witness executed an affidavit recanting the testimony he gave during the defendant's murder prosecution.

It was about this time, Petitioner learned of the Video-Tape recorded statement made by George Aguilar.

From November 05, 2020 to the time Petitioner filed his State habeas application on March 21, 2021 approximately 4 months had expired and/or run against the 1-year limitation period, thus, Petitioner had approximately 8 months before the limitation period expired. The Texas Court of Criminal Appeals (CCA) denied the Petitioner's State habeas application on March 15, 2023, thus Petitioner had until November 15, 2023 in which to file his federal habeas petition. Petitioner filed his federal habeas petition on April 08, 2023.

The district court did not consider and address whether Petitioner's federal habeas petition was timely under Section 2244(d)(1)(D).

Petitioner argued that under *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013), newly discovered evidence consisting of the Video-Tape recorded statement and affidavit of George Aguilar

conclusively established that he did not commit the offense charged and that in light of this new evidence, no juror, acting reasonably, would have voted to find him guilty. The evidence when compared with the inculpatory evidence that consisted of inconsistent and contradictory testimony that is weak raises sufficient doubt about Petitioner's guilt to undermine confidence in the result of his trial.

The district court never determined whether the evidence was newly discovered evidence or was not newly discovered evidence.

The district court addressed Petitioner's claim of actual innocence in that, Petitioner pointed to a 2020 affidavit executed by George Aguilar arguing that it provided an Alibi. The district court asserted that the affidavit stated that Petitioner was at home when the murder occurred. (Appendix B). The district court held that the affidavit was contradicted by a recorded oral statement that was made earlier during the investigation, and the recant came over 2 years after the trial and recants are generally unreliable. (Appendix B; p. 4). The district court contradicted this by stating that George Aguilar's affidavit comes over three years after the trial and the Petitioner's conviction, and the fact that the affidavit contradicts an earlier statement and fails to explain or account for the delay militates against a finding that the affidavit establishes that the Petitioner is actually innocent. (Appendix B; p. 4).

The district court furthered that the Petitioner's argument that the affidavit could not have been discovered with reasonable

diligence before the limitations period expired must also be rejected. To the extent that this argument constitutes a freestanding claim of actual innocence based on the affidavit, the Petitioner is again not entitled to relief. The district court concluded that there was no evidence of an independent constitutional violation that support the Petitioner's claim. Hence, the claim and argument fail to reach the threshold for tolling the 1-year limitation period, or to provide a gate-way through which the district court could consider otherwise time-barred claims. (Appendix B; p. 5).

Notwithstanding, the district court's determination that the Petitioner's federal habeas petition was time-barred, the district court addressed Petitioner's Ineffective Assistance of Counsel (IAC) claim. The district court asserted that Petitioner argued that his counsel was ineffective; he could have called George to testify and establish the Petitioner's alibi defense at trial if counsel had conducted an adequate investigation. The district court held that in response, trial counsel had filed an affidavit attesting that he heard George's recorded statement and it "fingered" the Petitioner as the killer, and that counsel also noted that George was a co-defendant, and that he did not have permission from George's counsel to speak to him about the statement. (Appendix B; p. 5). The district court held that the evidence showed that counsel was aware of the damaging statements made by George, and assuming that he could call him as a witness and did not, was a reasonable strategic

decision, thus, the claim was denied. (Appendix B; p. 6).

In opposition to the district court's determination of the case, Petitioner filed a Motion To Reconsider pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. (Dkt. No. #25).

Petitioner argued that the district court's statement that the affidavit was contradicted by a recorded oral statement that was made earlier during the investigation was not supported by the evidence because the recorded oral statement was not contained in the State court record.

First, the district court held that the Petitioner was mistaken, and then went on to state that its determination was based on trial counsel's affidavit concerning the effect of the audio recording on his trial preparation. The district court went on to state that while the Petitioner was correct that the audio recording was not before the court, Petitioner presented no evidence that trial counsel's was incorrect. (Appendix C).

Petitioner articulated, that the district court erred when reviewing the probative value of the affidavit made by George Aguilar because the court fail to compare the affidavit against the Video-Tape recorded statement that was absent from the record; it was articulated that the district court erred when it determined that there was no evidence of an independent constitutional violation when the actual innocent claim hinged on a Brady violation and IAC violation; it was articulated that the district court erred by deferring to the affidavit of trial counsel because it had been rejected by the CCA when

it didn't adopt the findings of fact & conclusions of law of the convicting court and incorproate it in its decision; articulated that the district court erred when it fail to consider and addressed Petitioner's argument that the 1-year limitation period commenced when he learned of the Video-Tape recorded statement made by George Aguilar, and received the affidavit of George Aguilar that provided evidence of his innocence, wherein the State had suppressed the Video-Tape recorded statement made by George Aguilar; and articulated that he was deprived of his right to due process because the district court did not have before it a complete State habeas record wherein the Video-Tape recorded statement would have provided clear and convincing evidence rebutting the affidavit of trial counsel.

Notwithstanding, the district court denied Petitioner's motion for reconsideration. (Appendix C). Petitioner articulated these errors in his application for a COA with the United States Court of Appeals for the Fifth Circuit, that denied the application on March 02, 2026. (Appendix A). And Petitioner's motion for reconsideration on March 27, 2027. (Appendix D).

The court of appeals determination in the case was based on the district court's procedural ruling, that a COA will issue only "when the prisoner shows, at least, that jurists of reason would find it debatable whether the [application" states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the the district court was correct in its procedural ruling.

Citing, Slack v. McDaniel, 120 S.Ct. 1595 (2000).

Petitioner articulated to the court of appeals that the question was not whether the [application] for a COA stated a valid claim of the denial of a constitutional right, but whether the federal habeas petition itself stated a valid claim of the denial of a constitutional right. Thus, this was the wrong standard of review under Slack.

REASONS FOR GRANTING THE PETITION

This is the Petitioner last stand before a Court whom the Justices therefore took a constitutional oath to protect the rights of Citizens of the United States State. This is the Court of last resort in the administration of justice...

Unlike a traditional petition for writ of certiorari, this Court has jurisdiction and authority to determine whether a court of appeals should have issued a COA to appeal a decision handed down by a federal district court. *Hohn v. U.S.*, 118 S.Ct. 1969 (1998) and *Miller-El v. Cockrell*, 123 S.Ct. 1029 (2003).

Unlike a traditional petition for writ of certiorari, review before this Court is whether the court of appeals should have issued a COA from the district court's determination of the case, or whether the issue presented is adequate to deserve encouragement to proceed further.

Therefore, considerations governing review on certiorari under Rule 10 of the Supreme Court Rules, that review on a writ of certiorari is not a matter of right, but of judicial discretion is not controlling. As this is a matter of statutory right for "unless a circuit justice or judge issues a COA, an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court."

Thus, Petitioner is entitled to review rather than a "blanket denial" of the foregoing petition. In the interest of insuring that the matter of the COA will not be overlooked and that,

if the Court determines that the court of appeals, and a COA should be denied, the reasons for denial should be stated by the Court, as on like of the statutory text this Court can issue a COA. *Else v. Johnson*, 104 F.3d 82 (5th Cir. 1997),, and *Hunter v. U.S.*, 101 F.3d 1565 (11th Cir. 1996).

Under the contours of *Slack v. McDaniel*, 120 S.Ct. 1595 (2000) and *Miller-El*, this Court has instructed that a COA "will" be granted only if the habeas petitioner makes a substantial showing of the denial of a constitutional violation. Title 28 U.S.C., Section 2253(c)(2). Implementing two (2) hurdles a habeas petitioner must jump, this Court has mandated that: (1) in order to make a substantial showing, when the constitutional claims have been decided on the merits, the habeas petitioner must demonstrate that a reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong; (2) when the district court had denied the claim or petition on procedural grounds, the the habeas petitioner must demonstrate that a jurist of reason could find it debatable that the petition states a valid claim of the denial of a constitutional right and must show that reasonable jurists could debate whether the district court was correct in its procedural ruling. Any doubts whether to grant a COA is to be resolved in the habeas petitioner's favor. *Hill v. Johnson*, 210 F.3d 481 (5th Cir. 2000).

Under this Court's unwritten "Rule of Four" vote in favor of review. This practice directly contravenes the plain text

of Section 2253(c)(1)

The first hurdle in this case is whether jurists of reason could find it debatable that the petition states a valid claim of the denial of a constitutional right?

The court of appeals held that the application did not meet this requirement. However, the application for a COA directed the court of appeals to the federal habeas petition arguing that the petition facially stated a valid claim of the denial of a constitutional right, by arguing that the State violated his rights under *Brady v. Maryland*, 83 S.Ct. 1194 (1963) when it suppressed a Video-Tape recorded statement that exculpated him from the commission of the charged offense, and that he was deprived of his constitutional right to effective assistance of counsel under *Strickland v. Washington*, 104 S.Ct. 2052 (1984).

In *Pedder v. Lumpkin*, 859 Fed.Appx. 697 (5th Cir. 2021), a Circuit Judge for the United States Court of Appeals for The Fifth Circuit in granting a COA held that the federal habeas petition facially alleged a valid claim of the denial of a constitutional right, so that Pedder could appeal the district court's determination that the evidence presented was not new to meet the actual innocence exception to the 1-year limitation period under *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013).

Therefore, the court of appeals determination that Petitioner fail to meet the requirement of Slack is at best suspect because under the law of the Fifth Circuit Petitioner's federal habeas petition facially stated a valid claim of the denial of a

constitutional right.

Notwithstanding, the district court's determination that Petitioner was not entitled to the issuance of a COA did not rest on whether the Petitioner's federal habeas petition stated a valid claim of the denial of a constitutional right, nor did the district court state in its determination that the Petitioner's federal habeas petition fail to state a valid claim of the denial of a constitutional right.

It was the district court's conclusion that jurists of reason would not find it debatable that Petitioner's claims are time-barred.

Therefore, Petitioner clearly demonstrated that a jurist of reason could find it debatable that the Petitioner's federal habeas petition states a valid "facial" claim of the denial of a constitutional right.

The second hurdle in this case is whether reasonable jurists could debate whether the district court was correct in its procedural ruling?

As noted in the decision of the court of appeals, that Petitioner argued that the district court failed to properly consider whether his claims concerning the new affidavit, which allegedly provided him with an alibi, were timely under Title 28 U.S.C., Section 2244(d)(1)(D). Under notation the court of appeals held that Petitioner fail to meet the requirements of Slack as to the second hurdle.

The problem is that the district court never considered and addressed Petitioner's argument that the 1-year limitation

did not commence on November 05, 2020, the date that he received the affidavit of George Aguilar and learned of the Video-Tape recorded statement made by George Aguilar.

Notwithstanding, the court of appeals notation, Petitioner specifically argued that the district court erred because it did not consider and address whether he was entitled the statutory tolling provisions of Section 2244(d)(1)(D).

Clearly, the failure to the district court to consider and address Petitioner's argument amounts to the violation of his rights to Due Process. It has long been established that the dismissal of a first federal habeas petition is a particularly serious matter for that dismissal denies the petitioner the protections of the "Great Writ" entirely, risking injury to an important interest in human liberty... *Lonchar v. Thomas*, 116 S.Ct. 1293 (1996).

Section 2244(d)(1)(D) provides that a 1-year limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of- the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

To ascertain whether the Petitioner's habeas petition is timely under this provision, it must (1) be answered what is the factual predicate of the Petitioner's claim; (2) when could he have discovered the factual predicate of the claim through the exercise of due diligence; and (3) did he file the petition

within 1-year of discovering the factual predicate of the claim. *Rivas v. Fisbher*, 687 F.3d 514 (2nd Cir. 2012), *Moore v. Knight*, 368 F.3d 936 (7th Cir. 2004), and *Daniels v. Uchman*, 421 F.3d 490, 492 (7th Cir. 2005).

The determination of the date on which the factual predicate for a habeas claim is first discoverable is a fact-specific inquiry which required the district court to analyze the factual bases of each claim and to determine when the facts underlying the claim were known, or could with due diligence have been discovered. The district court did not perform this analyzation. (Appendix B).

However, the ultimate question whether a habeas petitioner exercised due diligence is one of fact. *Id. Wyzykowski v. Department of Corrections*, 226 F.3d 1213 (11th Cir. 2000).

Notably, the district court gave reference to Section 2244(d)(1)(D), but did not analyze the Petitioner's claim under the statutory text.

It was never disputed by the Respondent, nor did the district court assert that the Video-Tape recorded statement and the affidavit of George Aguilar was not newly discovered evidence, or that Petitioner did not ~~discover~~ this evidence until November 05, 2020, through the exercise of due diligence. Had the district court calculated the commencement of the 1-year limitation period from November 05, 2020, Petitioner's federal habeas petition was clearly timely filed...

The district court simply held that Petitioner's argument

that the affidavit could not have been discovered with reasonable diligence before the limitations period expired must also be rejected. However, the district court did not explain how this was so. (Appendix B).

The statutory tolling provision of Section 2244(d)(1)(D) has no bearing on the value of the evidence presented regarding whether it consists of recantations of witness testimony, or other evidence, it is the factual predicate and its discoverability.

The question is whether the court of appeals should have issued a COA upon the district court's failure to consider and address the Petitioner's argument that the limitation period commenced on November 05, 2020, the date that he learned of the factual predicate for the claims under Section 2244(d)(1)(D)?

In view of Petitioner's due process rights to be heard, present evidence, and have judicial findings based on that evidence, the district court violated the Petitioner's right by failing to consider and address the issue, because the Petitioner's argument been considered and addressed the federal habeas petition would have been timely filed...

Reasonable jurists would differ in the conclusion reached by the court of appeals, that Petitioner did not meet the requirements of Slack, and that the district court was correct in its procedural ruling that did not address the contours of the Petitioner's argument and fact that the petition was not time-barred under Section 2244(d)(1)(D). The court of appeals determination on this matter is at best suspect. Reasonable jurists could debate

whether the district court was correct in its procedural ruling thus the court of appeals should have issued a COA. Alternatively, this Court has the jurisdiction as well as the authority to issue a COA under governing law.

The district court asserted that claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying State criminal proceeding. The district court furthered that there was no evidence of an independent constitutional violation that supported the Petitioner's claim. Hence, this claim and argument fail to reach the threshold for tolling the limitation period, or to provide a gateway through which the district court could consider the otherwise time-barred claims.

However, Petitioner claim of actual innocence hinged on the Brady claim and IAC claim. Further, this Court has left open the possibility that a truly persuasive showing of actual innocence might warrant relief in an extraordinary case, the threshold for such relief would be extraordinarily high. *Herrera v. Collins*, 133 S.Ct. 853 (1993). Notwithstanding, the Brady and IAC claim, the district court did not consider whether the Petitioner met the threshold requirement of the possibility of relief under *Herrera*.

In regards to the Petitioner's IAC claim in reference to trial counsel's affidavit, the district court held that the evidence showed that counsel was aware of the damaging statements

made by George, and assuming that counsel could have called him as a witness and did not, was reasonable strategic decision.

Citing, *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013). the district court stated that an "unexplained delay" in presenting alleged new evidence bears on the determination of whether a habeas petitioner has made the requisite innocence showing.

The district court asserted that George Aguilar's affidavit came over three years after the trial and Petitioner's conviction, and the fact that the affidavit contradicted an earlier statement and failed to explain or account for the delay, militated against a finding that the affidavit established that Petitioner was actual innocence. (Appendix B) p. 4).

The district court's determination that the affidavit of George Aguilar was contradicted by an earlier statement went directly to the Petitioner's argument that there was no evidence to support this determination that was based on a factual matter argued by the Petitioner that the Video-Tape recorded statement was absent from the record and the affidavit of George Aguilar could not be compared against it. In response to the Petitioner's argument, the district court held that it deferred to the affidavit of trial counsel to find that the affidavit of George Aguilar was contradicted by a previous statement. The district court conceded that the Video-Tape recorded statement was not before the court and absent from the State habeas record. In turn, Petitioner argued that the deference accorded trial counsel's affidavit was in error and he had been deprived of the essential

evidence by the district court to prove the truth of the affidavit made by George Aguilar and rebut the assertion made by trial counsel in his affidavit that he reviewed the Video-Tape recorded statement and it fingered the Petitioner. Petitioner argued that it was the district court's duty and obligation to assure a complete record to determine the sufficiency of the evidence and to review the issue presented. Petitioner furthered that the truth of trial counsel's affidavit (credibility and reliability) was rejected by the CCA when it did not incorporate the findings of fact & conclusions of law made by the convicting court into its decision denying Petitioner's State habeas application.

In *Goodwin v. Johnson*, 132 F.3d 162 (5th Cir. 1997); the United States Court of Appeals for the Fifth Circuit found that neither the convicting court of the CCA made any express findings of fact regarding whether the defendant requested the assistance of counsel during an interrogation when he was first taken to the Police Station. The court of appeals concluded that neither court made any implicit fact-finding on the issue. Cf., *Marshall v. Lonberger*, 103 S.Ct. 843 (1983).

In the instant case, not only were the findings of fact & conclusions of law of the convicting court which was based on the affidavit of trial counsel was adopted nor incorporated in the action of the CCA and were directly inconsistent with the CCA's peremptory denial of Petitioner's State habeas application.

Any notation that the presumption of correctness should be afforded to the affidavit of trial counsel, has been rejected

by the CCA that included the affidavit's credibility and reliability, thus, for the district court to rely on the affidavit as contradicting evidence in reference to the affidavit made by George Aguilar is totally erroneous absent an evidentiary hearing held by the district court.

Therefore, the court of appeals determination that Petitioner did not meet the requirements of Slack on these matters is at best suspect, because reasonable jurist could debate that the district court procedural ruling was decided wrongly, or that such ruling was correct, because (1) Petitioner was deprived of a complete record upon which the district court could have made a fair determination, because Petitioner was entitled to present evidence and have judicial findings based on that evidence, (2) the absence of the the Video-Tape recorded statement deprived the Petitioner of critical evidence that would have refuted the assertion made by trial counsel in his affidavit and strengthen the affidavit of George Aguilar, and (3) the Video-Tape recorded statement, that was suppressed by the State, coupled with the affidavit of George Aguilar vindicates the Petitioner of the offense charged, and would have shown that trial counsel's assertion that he reviewed the statement was simply not true that in part was probative as to the Petitioner's Brady and IAC claim. Thus, the court of appeals should have issued a COA, notwithstanding this Court has jurisdiction to issue a COA under governing law.

The brink of the matter is that Petitioner is proceeding

in propria persona and, because of such the the matter of the fair administration of justice will either be overlooked or simply ignored by the Court when it is clear that Petitioner's case was wrongly decided by the district court. The blanket denial of a COA undermines its purpose.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Adrian Aguilar
Adrian Aguilar

Date: May 26, 2026