No. 26-6187 (CAPITAL CASE)

IN THE

SUPREME COURT OF THE UNITED STATES

REINALDO DENNES,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

On Petition for Writ of Certiorari
to the Texas Court of Criminal Appeals

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Reinaldo Dennes is scheduled for execution November 19, 2026.

During the punishment phase of his trial, Reinaldo Dennes's trial counsel presented a meager four witnesses to convince the jury that he should not be sentenced to death. Years later, post-conviction counsel discovered a wealth of mitigating evidence that trial counsel had failed to learn about, including a narrative of Dennes's arrival in the United States as a young boy after escaping from Communist Cuba in 1961; accounts of heavy alcohol use and physical abuse in Dennes's home as a child; Dennes's dangerous voyage to rescue his cousin from Cuba in 1980; a traumatic event where Dennes saved his daughter from a fire and suffered severe injuries; and the results of Dennes's first and only neuropsychological exam to date, which shows severe deficits in executive functioning that impact his ability to focus, learn, and complete complex tasks. Despite the evidence that Dennes's trial counsel put on a fundamentally ineffective mitigation investigation by failing to discover this information, the Texas Court of Criminal Appeals ("TCCA") refused to allow Dennes's claim to proceed to merits review. This Court should intervene to rectify this injustice.

Respondent offers three points against Dennes's petition. Each of these arguments fails.

I. Certiorari Review and Stay of Execution are not Foreclosed by an Independent and Adequate State-Procedural Bar.

Respondent contends that Dennes's ineffective assistance of counsel claim is foreclosed by an adequate and independent state bar, but this ignores the firm basis of Dennes's claim in the federal Constitution. Dennes relies on the Sixth and Fourteenth Amendments to the United States Constitution, which protect his right

to effective assistance of counsel and due process of law. The question of whether Dennes received effective assistance is one that the State cannot insulate from review under the adequate and independent state law doctrine, as it is squarely a federal question. Thus, contrary to the State's argument, Dennes's claim "fairly appears to rest primarily on federal law, [and is] interwoven with the federal law." *Coleman v. Thompson*, 501 U.S. 722, 735-736.

Respondent further relies on *Hogue v. Johnson*, 131 F.3d 466, 487–88 (5th Cir. 1997) to argue that Dennes's claim is not independent of the procedural bar in § 5(a). But Respondent confuses independence with adequacy. Because adequacy is not at issue in Dennes's case, *Hogue* is irrelevant to the cognizance of his claim.

II. The TCCA's precedent in *Ex parte Blue* and *Ex parte Speer* applies.

Respondent also argues that the TCCA's precedent does not apply to Dennes's case. But the thrust of the TCCA's decisions related to § 5(a)(3) support a grant of Dennes's writ. While *Ex parte Blue* did involve an intellectual disability, there is no reason to believe that this changed the way that the court applied § 5(a)(3). *Ex parte Blue*, 230 S.W.3d at 163. Nor does that language of § 5(a)(3) suggest that it is available to intellectual disability claims alone. Indeed, the language of § 5(a)(3) clearly applies to any claim based on a "violation of the United States Constitution" that the petitioner can show, by clear and convincing evidence, was the reason for his sentence of death. It would be improper and would go against the intent of the Legislature to assume that this analysis is only reserved for a particular category of constitutional violations.

Furthermore, as Respondent recognizes, Texas courts have found that *Wiggins* claims like the claim that Dennes now presents are cognizable under § 5(a)(3). *See Ex parte Speer*, No. WR-59,101-06, 2025 WL 2151382, at *1 (Tex. Crim. App. July 30, 2025). Characterizes Speer as an "unusual act of grace" does not negate the fact that the TCCA engaged in the same prima facie analysis under § 5(a)(3) that it applied for an intellectual disability claim in *Ex parte Blue*. Resp. 20.

III. Dennes's claim does not fail on the merits.

Respondent contends that Dennes' *Wiggins* claim fails because counsel conducted a reasonable mitigation investigation and presented sufficient evidence at sentencing, but Respondent's argument is not supported by the record. As Respondent points out, trial counsel told the court during voir dire that he was "only able to work on the case-in-chief and the investigator and counsel did not have time to investigate and prepare a response to any extraneous matters." Resp. 24. While it is true that this statement shows counsel wanted more time and resources, Resp. 24-25, it also shows that this desire was based on counsel's total inability to conduct any kind of punishment phase investigation up to that point. Thus, while asking for time and resources may be a "reasonable trial strategy," Resp. 25, it was not reasonable that trial counsel chose to focus entirely on the case in chief up until the start of trial and, even after trial began, continued to solely investigate witnesses relating to guilt-innocence. Resp. 24.

Furthermore, the new evidence that Dennes presented in his state habeas petition is not cumulative of the testimony presented at sentencing as Respondent

claims. In particular, Respondent argues that the new evidence of Dennes's first and only neuropsychological exam would not have persuaded a jury to vote in favor of a life sentence because "the jury heard evidence that Dennes organized and executed *two highly sophisticated robberies*." Resp. 27 (emphasis in original). In fact, the opposite is true: if the jury had heard evidence of Dennes's cognitive deficits, they would have had reason to question Dennes's ability to plan and execute such a sophisticated heist. There is a reasonable probability that this doubt would have convinced at least one juror to sentence Dennes to life rather than death. Thus, the evidence is not merely cumulative, but rather would have given the jury new reasons to consider a sentence less than death. It was therefore highly prejudicial that trial counsel failed to investigate or present any of this evidence at trial.

IV. Dennes is Entitled to a Stay of Execution.

Dennes is entitled to a stay of execution to facilitate the full consideration of his claims. He remains steadfast in the arguments presented in his Motion for Stay of Execution.

CONCLUSION

This Court should grant *certiorari*. It should also stay Dennes's execution pending the disposition of this petition, as requested by separate application.

Respectfully submitted,

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