Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2002

IN RE GRANVILLE RIDDLE

ORIGINAL PETITION FOR A WRIT OF HABEAS CORPUS

THIS IS A DEATH PENALTY CASE.
MR. RIDDLE IS SCHEDULED TO BE EXECUTED ON JANUARY 30, 2003.

Respectfully submitted,

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether Mr. Riddle's jury had a constitutionality adequate vehicle in order to consider and give effect to the mitigating evidence offered at petitioner's trial?

2. Whether Mr. Riddle's Sixth Amendment rights were violated by counsel's failure to investigate and present compelling evidence in mitigation of the death penalty and in impeachment of the State's pathologist?

3. Whether Mr. Riddle's rights to Due Process were violated by the presentation of expert testimony which was not supported by medical science?

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The jury had no vehicle to consider and give effect to the mitigating evidence offered at trial. 10

The jury was further denied the opportunity to consider and give effect to substantial mitigating evidence which was never discovered by trial counsel or presented in Mr. Riddle's trial. 12

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Mr. Riddle's Eighth and Fourteenth Amendment rights were violated by the Trial Judge's failure to provide the jury a constitutionally adequate instruction which allowed for a reasoned moral response to the mitigating evidence. 23

Mr. Riddle's Sixth and Fourteenth Amendment rights were violated by the failure to investigate, discover and present additional mitigating evidence as well as evidence which impeached the veracity, credibility and conclusions of the State's Pathologist. 29

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. . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .

STATUTORY PROVISIONS AT ISSUE

The questions presented implicate the following provision of the United States Code:

28 U.S.C. § 2241(a)

Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.

28 U.S.C. § 2244(b)(1)

A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

STATEMENT OF THE CASE

I. Introduction.

Mr. Riddle was convicted of capital murder and sentenced to death in Cause No. 27,243, 47th District Court of Potter County, Texas. This conviction was affirmed by the Texas Court of Criminal Appeals in ***Riddle v. State***, 888 S.W.2d 1 (Tex.Cr.App. 1994). Mr. Riddle was appointed counsel who prepared and filed an application for writ of habeas corpus. The Texas Court of Criminal Appeals denied Mr. Riddle's application in an unpublished summary order. Mr. Riddle filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Texas and relief was denied. The Fifth Circuit Court of Appeals affirmed. ***Riddle v. Cockrell***, 288 F.3d 713 (5th Cir. 2002). This Court denied Mr. Riddle's petition for certiorari.

The Texas Court of Criminal Appeals' factual summary included in part:

On October 9, 1988, appellant and a friend drove to the victim's home to see if he wanted to go drinking. Appellant testified he carried a tire iron so he could pry the screen off the kitchen window to gain entry, but found a door unlocked. Appellant entered the victim's house through an unlocked door and found him "drunk, passed out" in the bedroom.

Appellant woke the victim and began to talk to him. The victim told appellant he wanted to have a homosexual relationship with him. As appellant got up to leave, the victim grabbed appellant by the arm, pulled appellant on top of him, put his lips on appellant's ear, and put one hand on appellant's butt. Appellant hit the victim "on the top" of his head with the tire iron. Appellant testified that after he struck the first blow, appellant got out of the bed and the victim "raised his hands up, grabbed his head and started moaning." Appellant testified he inflicted more blows to the victim, and the more he hit him the madder he got. The victim was struck in the head at least fifteen times. As appellant left the house, he took the victim's wallet and his car.

The forensic pathologist, who conducted the victim's autopsy, testified the victim's blood-alcohol level was .29% which showed the victim was extremely intoxicated to the degree that his motor and sensory functions were "totally out." The pathologist further testified the cause of death was multiple blunt force trauma, and the fatal blow was one which struck the victim "behind the left ear in the mastoid area and compressed the spinal cord." The pathologist also testified the first blow was not the fatal blow.

Riddle, 888 S.W.2d at 2.

II. The consideration of Mr. Riddle's compelling mitigating evidence relating the background and circumstances of his childhood and life is a constitutionally indispensable part of the process of inflicting the penalty of death.

A. Compelling evidence mitigates Mr. Riddle's moral culpability for the murder in this case.

The concept of constitutionally relevant mitigating evidence is broad, encompassing "any aspect of defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." ***Eddings v. Oklahoma***, 455 U.S.

STATEMENT OF REASONS FOR NOT MAKING THIS APPLICATION

TO THE UNITED STATES DISTRICT COURT

Mr. Riddle's claim within this Court constitutes an exceptional circumstance that warrant the exercise of this Court's discretionary powers, and adequate relief cannot be obtained in any other form or from any other court.

Mr. Riddle is aware that original writs before this Court are rarely granted.[12] However, Mr. Riddle would show the Court the following:

The United States Code, 28 U.S.C. § 2244 (b) provides:

> (1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.
>
> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless –
>
> > (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
> >
> > (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
> >
> > > (ii) the facts underlying the claim, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

The claims presented herein cannot meet the standard set forth in § 2244(B). While the Court's opinion in ***Penry II, supra,*** occurred after the requests for certificate of appealability

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[12] S. Ct. R. 20.4(a).

were filed with the Court of Appeals, this Court has indicated that ***Penry II*** was not a new rule of constitutional law but simply an explanation of the ***Penry I*** opinion. Moreover, Mr. Riddle's claims regarding the failure of this trial counsel to investigate and present additional mitigating evidence, and impeachment evidence of the state's pathologist, was available previously to not only the trial counsel, but also to the previous writ counsel.

Mr. Riddle's ***Penry II*** claim was preserved at trial long before this Court's opinion was released. It was raised on direct appeal to the Texas Court of Criminal Appeals and addressed on the merits in 1994. As the Texas Court did with every such claim prior to 2001, it was overruled. Thereafter, the claim was raised and rejected in Mr. Riddle's state habeas application and in his petition for writ of habeas corpus filed in the United States District Court for the Northern District of Texas (Amarillo Division). It was at this point that Mr. Riddle's appointed writ counsel apparently abandoned the claim, pursuing other claims in the United States Court of Appeals for the Fifth Circuit and this Court. This was a decision made by Mr. Riddle's counsel which now places Mr. Riddle in the position of seeking redress through the filing of an original writ.

Previous counsel were appointed and not chosen or directed by Mr. Riddle. The relationship between counsel and Mr. Riddle was strained and relevant decisions were made by counsel. Unfortunately, the Texas Court of Criminal Appeals has held that Mr. Riddle holds no right to the effective assistance of counsel during the state habeas corpus process even though the State statute requires the appointment of competent counsel. ***Ex parte Graves***, 70 S.W.3d 103 (Tex.Cr.App. 2002). Congress made a similar pronouncement with regard to counsel

On October 10, 1996, Riddle raised the same *Penry* claims in his initial application for state habeas relief, which the Court of Criminal Appeals denied on its own review of the record. *Ex parte Riddle,* No. 33,200-01 (Tex. Crim. App. Feb. 26, 1997) (unpublished order); *see also* SHTr 50-62.[5] Riddle also filed a federal habeas petition, which was denied on July 14, 2000. *Riddle v. Johnson,* No. 2:97-CV-343-J (N.D. Tex 2000). Riddle asserted his *Penry* claims in the federal district court as well. *See* Application for Writ of Habeas Corpus at 37-46. However, Riddle abandoned his *Penry* claims on appeal and the Fifth Circuit affirmed the denial of federal habeas relief as to his remaining claims on April 15, 2002. *Riddle v. Cockrell,* 288 F.3d at 721. This Court denied certiorari review on October 15, 2002. *Id.,* 123 S. Ct. 420 (2002).

Thereafter, Riddle filed a successive state habeas application in the lower court on January 24, 2003. The application — raising the instant claims — was dismissed as an abuse of the writ on January 27, 2003. *Ex parte Riddle,* No. 33,200-02 (Tex. Crim. App. 2003) (unpublished order). Riddle's original petition for writ of habeas corpus and application for stay of execution in this Court followed.

ARGUMENT

I. The Questions Presented for Review Are Unworthy of the Court's Attention.

Riddle's claims, which are presented in an original petition for writ of habeas corpus, are unworthy of this Court's attention. Rule 20.4(a) of the RULES OF THE SUPREME COURT OF THE UNITED STATES provides that "[t]o justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from

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[5] "SHTr" refers to the state habeas transcript — the transcript of pleadings and documents filed with the court during state habeas corpus proceedings — followed by page numbers.

any other court. This writ is rarely granted." *See Felker v. Turpin,* 518 U.S. 651, 665 (1996) (explaining that Rule 20.4(a) delineates the standards under which this Court grants such writs). For the reasons explained below, Riddle fails to advance a compelling or exceptional reason for the Court to exercise its discretionary powers to issue a writ of habeas corpus in this case.

II. Riddle Fails to Meet the Requirements of 28 U.S.C. § 2244(b) for Filing a Successive Federal Habeas Petition.

Rule 20.4(a) and 28 U.S.C. § 2242 state that an original habeas petition in the Supreme Court must set forth "reasons for not making application to the district court." In this case, the reasons are clear: Riddle's original habeas petition is actually a *successive* habeas petition. However, this Court's consideration of a successive habeas petition is subject to "the restrictions on repetitive and new claims imposed by [28 U.S.C.] § 2244(b)(1) and (2)." *Felker v. Turpin,* 518 U.S. at 662-63. As a threshold issue, "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1) (West 2003). Thus, Riddle's *Penry II* claim — challenging the nullification instruction — must be dismissed as successive because the same claim was presented and adjudicated in his first federal habeas petition. Alternatively, both Riddle's *Penry II* claim and his remaining claims of trial error — which were *not* presented in his first petition — must be dismissed because Riddle cannot demonstrate that the claims rely on "a new rule of constitutional law, made retroactive to cases on collateral review by [this] Court, that was previously unavailable," or a previously undiscovered factual predicate that establishes his actual innocence. 28 U.S.C. § 2244(b)(2) (West 2003).

Initially, Riddle concedes that *Penry II* does not qualify as a new rule of constitutional