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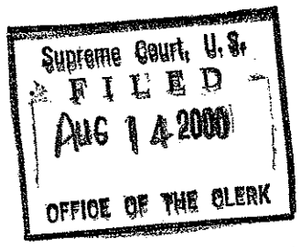

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD DAVID LUDWIG — PETITIONER

(Your Name)

VS.

GARY L. JOHNSON
DIRECTOR TDCJ-ID — RESPONDENT(S)

~~ON PETITION FOR A WRIT OF CERTIORARI TO~~

CORRECTED ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

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

~~PETITION FOR WRIT OF CERTIORARI~~

RONALD DAVID LUDWIG
(Your Name)

1200 FM 655
(Address)

ROSHARON, TEXAS 77583
(City, State, Zip Code)

NONE
(Phone Number)

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00-5682

ORIGINAL

QUESTION(S) PRESENTED

Whether the state court's interpretation of state evidentiary law was an intentional subterfuge which rose to the level of a federal constitution amendments 5 and 14 due process violation by the state courts refusal to apply applicable controlling state law principles and finally by withdrawing and sealing the state court's opinion in Cochran v. State, 844 S.W.2d 494 (Tex Crim App. 1992), which was Petitioner's exact claim ruled unanimously in Petitioner's favor, while the federal court's review applied an improper standard of review per Williams v. Taylor, 120 S.Ct 1495 (2000) and the federal courts refused an evidentiary hearing ordering Cochran unsealed, thus contravening Williams v. Taylor, 120 S.Ct, 1479 (2000).

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JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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: _____, 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. § 1254(1).

28 U.S.C § 1241
28 U.S.C § 1254
Rule 20.4(a)

[ ] 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).

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STATEMENT OF THE CASE

The lower courts applied the wrong standard of review for federal habeas that no jurist could disagree which was improper according to Williams v. Taylor, 120 S.Ct 1495 (2000). Petitioner has never received a federal habeas review using the proper standard.

The state courts violated federal due process by allowing Petitioner's wife to testify untruthfully about things she said Petitioner had said, which were never said by Petitioner. State law did not permit such testimony. Instead of upholding the law, the state courts used subterfuge. The state courts refused to apply applicable controlling law and finally the state courts hid and continue to hide the Texas Court of Criminal Appeals unanimous decision in Petitioner's favor in the case of Cochran v. State 844 SW. 2d 494 (Tex. Crim. App. 1992).

The federal courts would not appoint counsel or order an evidentiary hearing to unseal Cochran, contrary to Williams v. Taylor, 120 S.Ct. 1479 (2000)

This original petition for habeas corpus is filed pursuant to Felkner v. Turpin, 116 S.Ct. 2333 (1996).

Petitioner's divorcing spouse lied to falsely convict Petitioner and thereby gained two million dollars of Petitioner's separate property because of the convictions. The first trial resulted in a hung jury at Count 6. The only evidence was Petitioner's wife's lies. The entire trial was fundamentally unfair.

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAY - 5 1998
NANCY DOHERTY, CLERK
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RONALD DAVID LUDWIG, **Petitioner,**	§	
	§	**CA3:97-CV-0579-R**
v.	§	
GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, **Respondent.**	§	

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Pursuant to the provisions of Title 28, United States Code, Section 636(b), and an Order of Reference of the Court in implementation thereof, the subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge, as evidenced by her signature thereto, are as follows:

A. Background

Type of Case: This is a petition for a writ of habeas corpus brought under Title 28, United States Code, Section 2254.

Parties: Petitioner, Ronald David Ludwig, is a state prisoner incarcerated in the Texas Department of Criminal Justice, Institutional Division.

Respondent, Gary L. Johnson, is the Director of the Texas Department of Criminal

APPENDIX A

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Justice, Institutional Division.

Statement of the Case:

The petitioner, Ronald David Ludwig ("Ludwig"), was charged with and pleaded not guilty to the offense of capital murder. On August 1, 1991, a jury found Ludwig guilty of the charged offense. However, because the jury was unable to answer the special issues presented during the sentencing proceeding, it was necessary for the court to sentence Ludwig. The trial court sentenced Ludwig to life in prison. **The State of Texas v. Ronald David Ludwig, Cause No. 17-857.**

Ludwig directly appealed his conviction and on February 16, 1994, the Tenth Court of Appeals affirmed Ludwig's conviction. ***Ludwig v. State,* 872 S.W.2d 771 (Tex.App.--Waco 1994), *aff'd,* 931 S.W.2d 239 (Tex.Crim.App. 1996).** After his conviction was affirmed by the appellate court, Ludwig filed a petition for discretionary review with the Texas Court of Criminal Appeals. The Court of Criminal Appeals granted Ludwig's petition and affirmed the decision of the Tenth Court of Appeals. ***Ludwig v. State,* 931 S.W.2d 239 (Tex.Crim.App. 1996)(en banc).** Ludwig did not file any state applications for habeas corpus relief.

On March 14, 1997, having exhausted his state court remedies, Ludwig filed the instant federal petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. In his petition, Ludwig contends that his conviction was obtained in violation of the marital communications privilege because his wife was allowed to testify concerning certain conversations between Ludwig and his wife that were privileged under the Texas Rules of Evidence.

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B. Analysis

1. The Standard of Review

The standard for federal habeas corpus review is set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (the "Act). Subsection (d) of the Act provides as follows:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was already adjudicated on the merits in State court proceedings unless the adjudication of the claim -
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254 (1996).

In addition, the resolution of factual issues by the state court is presumptively correct and will not be disturbed unless the state prisoner rebuts the presumption of validity by clear and convincing evidence. **28 U.S.C. § 2254 (e)(1) (1996).**

2. Ludwig's Contentions

Ludwig claims he is entitled to habeas relief because his conviction was based on testimony from his wife concerning certain conversations that should have been excluded under the marital communications privilege. In the state appellate courts, Ludwig argued that the trial court erred in permitting his wife's testimony because her testimony was privileged

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under Tex.R.Cr.Evid. 504(1).[1] From a review of the petitioner's original § 2254 motion, it appeared that he was also raising this issue in his petition for federal habeas relief. However, in a document entitled "Motion for Summary Judgment," filed July 16, 1997, Ludwig alleged that he is entitled to relief because the Texas Court of Criminal Appeals lacked the authority to promulgate Rule 504 since it "change[d] the substantive rights . . .[previously] conferred by" Tex. Crim. Proc. Code Ann. § 38.11 (Vernon 1986). The court finds that both arguments are without merit and recommends that Ludwig's petition for habeas corpus relief be denied.

A. Evidentiary Ruling

The court will first consider whether Ludwig is entitled to relief because the trial court erred in admitting testimony from the petitioner's wife that was privileged under the Texas Rules of Evidence. In analyzing a habeas petitioner's claim for relief, a "federal court may grant habeas relief based on an erroneous state court evidentiary ruling only if the ruling also violates a specific federal constitutional right or renders the petitioner's trial fundamentally unfair." ***Gochicoa v. Johnson*, 118 F.3d 440, 446 (5th Cir. 1997)(citation omitted).** A

---

[1]Rule 504 provides as follows: Husband-Wife Privileges.
"(1) Confidential communications privilege.
(a) Definition. A communication is confidential if it is made privately by any person to his spouse and it is not intended for disclosure to any other person.
(b) General rule of privilege. A person, whether or not a party, or the guardian or representative of an incompetent or deceased person, has a privilege during their marriage and afterwards to refuse to disclose and to prevent another from disclosing a confidential communication made to his spouse while they were married.
(c) Who may claim the privilege. The privilege may be claimed by the person or his guardian or representative, or by the spouse on his behalf. The authority of the spouse to do so is presumed."

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10757
USDC No. 3:97-CV-579-R

U.S. COURT OF APPEALS
FILED
MAR 17 1999
CHARLES R. FULBRUGE III
CLERK

RONALD DAVID LUDWIG,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT
OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

Ronald David Ludwig, a Texas prisoner (# 592152), has applied for a certificate of appealability ("COA") to appeal the district court's order dismissing his habeas corpus petition. See 28 U.S.C. § 2253(c)(1)(A). A COA will be granted only if Ludwig makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

Ludwig has not made a substantial showing of a denial of a constitutional right as to his claims that in promulgating TEX. R. EVID. 504(1)(d) the Texas Court of Criminal Appeals improperly altered Texas' marital communications privilege, as embodied in the former TEX. CODE CRIM. P. art. 38.11, allegedly violating his

APPENDIX B

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rights under separation-of-powers principles and the Due Process and Ex Post Facto Clauses. Accordingly, COA is DENIED. Ludwig's "Motion for Leave to Supplement" is DENIED.

HAROLD R. DeMOSS, JR.
UNITED STATES CIRCUIT JUDGE

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10574

U.S. COURT OF APPEALS
FILED
JUL 11 2000
CHARLES R. FULBRUGE III
CLERK

IN RE: RONALD DAVID LUDWIG,

Movant.

Motion for an order authorizing
the United States District Court for the
Northern District of Texas to consider
a successive 28 U.S.C. § 2254 application

Before POLITZ, SMITH, and BARKSDALE, Circuit Judges.

BY THE COURT:

Ronald David Ludwig, a Texas prisoner (# 592152), seeks authorization to file a successive 28 U.S.C. § 2254 habeas corpus application in district court. Ludwig, who was convicted of capital murder in 1991, apparently intends to raise an argument that his wife was permitted to testify at his trial in violation of the Texas marital-communications privilege. Ludwig raised this contention unsuccessfully in his first § 2254 application but appears to believe that he is entitled to a second chance because the Supreme Court, in Williams v. Taylor, 120 S. Ct. 1495 (2000), has allegedly altered the applicable statutory standard of review applicable to state-court decisions.

Ludwig has not shown either that (1) the factual predicate of his claims could not have been discovered previously through due diligence, and that the underlying facts, if proven, would be

APPENDIX D

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sufficient to establish by clear and convincing evidence that a reasonable trier of fact would not have found him guilty of the offense, or that (2) his claims are based on new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court. See 28 U.S.C. §§ 2244(b)(2)(A), (b)(2)(B), and (b)(3)(C). He has not shown that the district court applied an improper standard in dismissing his first § 2254 petition. Ludwig has failed to make the prima facie showing required to obtain authorization to file a successive habeas corpus application. Accordingly, Ludwig's motion for authorization is DENIED. Ludwig's motion for appointment of counsel is DENIED AS MOOT.

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