

THE TEXAS TRIAD OF INJUSTICE

This petition to the Human Rights Council is submitted by the National Lawyers Guild - Prison Chapter on behalf of all present and future prisoners incarcerated within the Texas Department of Criminal Justice (TDCJ), in the State of Texas, United States of America.

This petition is on the Texas Triad of Injustice which consists of three equally impeding state-created obstructions working in tandem. The Triad is deliberately designed to create an insurmountable barrier between Pro Se prisoners and meaningful access to Habeas Corpus review. This barrier has rendered Habeas Corpus review in Texas an ineffectual remedy to the extent that it results in a consistent pattern of gross, flagrant and mass violation of human rights. This is because it systemically deprives hundreds of thousands of people the universally recognized right to liberty with no meaningful redress. The Texas Triad of Injustice consists of:

- * Denial of Counsel during Habeas Corpus process
- * Insurmountable Statutory Obstruction of Evidentiary Burden
- * Quorum of One: Unconstitutional Habeas Review

UN STANDARDS FOR JUSTICE

The United Nation's 'International Covenant on Civil and Political Rights' (ICCPR) guarantees that: "All persons shall be equal before the Courts and Tribunals" [See, ICCPR, art. 14.1] and that "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law" [See, ICCPR, art. 14.5].

The ICCPR also ensures "that any person whose rights or freedoms as herein recognized are violated have an effective remedy" [ICCPR, art. 2.3(a)] and "that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities" [ICCPR, art. 2.3(b)].

This fundamental Human Right is designed to protect liberty and is echoed by Article 7 and 8 of the Universal Declaration of Human Rights ("All are equal before the law!"; "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law").

DENIAL OF COUNSEL DURING HABEAS CORPUS PROCESS

The Writ of Habeas Corpus is essential to the protection of fundamental and constitutional rights - but in Texas, Habeas Corpus has been rendered a meaningless ritual for those unable to afford appellate counsel. This means that justice is equal only to that which a prisoner can afford.

The structure, design, and operation of the Texas procedural system dictates that no indigent prisoner in Texas is entitled to the benefit of counsel in raising a claim of "Ineffective Assistance of Trial Counsel" (IATC). This is because Texas procedures make it 'virtually impossible' to present an adequate claim on IATC on Direct Appeal. The Texas Court of Criminal Appeals has explicitly stated that as a general rule a prisoner should NOT raise an issue of IATC on Direct Appeal and that the exclusive and correct forum is Habeas Corpus.

However, by deliberately choosing to move IATC claims outside the Direct Appeal process where counsel is constitutionally guaranteed, Texas has significantly diminished a prisoners ability to file such claims. This is because a prisoner, unlearned in the science of the law, can not be expected to possess the legal knowledge necessary to prepare thoughtful and meritorious Habeas Corpus applications. A prisoner may not only misapprehend the substantive details of Federal Constitutional law, or fail to comply with the State's procedural rules, but while confined in prison, the prisoner is in no position to develop the evidentiary basis for a claim of IATC - which often turns on evidence outside the trial record. This is significant because in Habeas Corpus the burden is on the prisoner to allege and prove facts which, if true, entitle the prisoner to Habeas relief.

Not only do Texas prisoners have to contend with the inherent restrictions of their confinement, but Texas has implemented a number of statutes that erect an insurmountable obstruction to obtaining the evidence necessary to carry their burden of proof. The statutory obstructions are explained in more detail in section "Insurmountable Statutory Obstruction".

The U.S. Supreme Court has severely criticized the Texas appellate system as it relates to the necessity of Habeas Counsel in Texas. Yet the Texas Legislature has not even blinked after these holdings. See, Martinez v. Ryan, 132 S.Ct. 21309 (2012) [EXHIBIT A]; Trevino v. Thaler, 133 S.Ct. 1911 (2013) [EXHIBIT B].

Significantly the U.S. Supreme Court held that Habeas Corpus is the "initial-review collateral proceeding" for IATC claims in Texas, and as such, the equivalent of a prisoners direct appeal as to such claims. See also, Ex parte Buck, 418 S.W.3d 98, 109 (Tex. Crim. App. 2013) [EXHIBIT C].

If a State does not appoint appellate counsel on a Direct Appeal, it would be deemed unconstitutional. It stands to reason that when an "initial-review collateral proceeding" (i.e. Habeas Corpus) is the equivalent of a prisoner's Direct Appeal as to IATC, then it follows that it is necessary for the State to appoint appellate counsel for that appeal otherwise it would also be unconstitutional. They are fundamentally the same in all but name.

The U.S. Supreme Court has further held that when counsel is not appointed for an "initial-review collateral proceeding" it raises "a significant risk of injustice". See, Martinez, id, and Trevino, id.

Unfortunately, Texas prisoners lack standing to challenge the very structure or design of the judicial system which deprives them of their liberty. The system is designed as a closed loop which only those wealthy enough to afford appellate counsel can escape.

INSURMOUNTABLE STATUTORY OBSTRUCTION

As explained briefly above, Texas has implemented a number of statutes that erect an insurmountable obstruction in obtaining the evidence necessary to carry a prisoners burden of proof in their Habeas Corpus application. This compounds the damage caused by the denial of counsel during the Habeas Corpus process. Some of those statutes are as follows:

Texas Government Code §552.028 [EXHIBIT D] is part of the Texas Public Information Act and allows government bodies to simply ignore all requests for information from any person incarcerated in an institution - even if that person offers to pay for such information. Although §552.028(b) technically allows a prisoner to request information pertaining only to themselves, in practice this is not the case. Government bodies in Texas routinely ignore such requests and cite §552.028 broadly to deny prisoners the information they seek for their Habeas Corpus applications.

Texas Code of Criminal Procedure, article 39.14(f) [EXHIBIT E] specifically prohibits an attorney from providing a prisoner with a copy of the "discovery" items in their case or the content of their case file/client-attorney file (other than the prisoners own statement). See, In re Powell, 516 S.W.3d 488 (Tex. Crim. App. 2017).

Interestingly, art. 39.14 is commonly known as the 'Michael Morton Act' which is named after the exonerated Texas prisoner. Michael Morton was granted habeas corpus relief after he discovered untested DNA evidence in his case file that proved his actual innocence. Significantly, if Michael Morton was in a Texas prison today, the statute carrying his namesake would prevent him from obtaining the very evidence he needed to prove his innocence. This is clearly the underlying intent of the Texas Legislature when they enacted this statute.

552.028 and 39.14(f) work in concert to deny prisoners the evidence necessary to prove their claims in an application of Habeas Corpus. The obvious question must be asked: How is an unrepresented prisoner meant to prove their allegations of IATC if they are prevented by both statute and their physical confinement from obtaining the necessary evidence? THEY CAN'T!

QUORUM OF ONE

The Texas Constitution governs the manner in which the Texas Court of Criminal Appeals must convene to decide its cases. It mandates that a quorum of judges decide whether Habeas Corpus relief should be denied - either a panel of THREE judges or by the en banc Court. See, Tex. Const. art. V, §4.

However, as exposed in Ex parte Dawson, 509 S.W.3d 294 (Tex. Crim. App. 2016) [EXHIBIT F] the Texas Court of Criminal Appeals' internal administration procedures effectively act as a standing order permitting an individual judge to act as a proxy for a quorum of judges on the basis of a pre-vote on a category of cases that are never actually seen by any judge other than the proxy judge.

In other words, rather than the constitutionally required quorum of three judges or the en banc court, the votes of all the required quorum are given to a single proxy judge who votes on their behalf. It is essentially a quorum of one.

Although a State has the right to decide how it reviews its Habeas Corpus applications, when the manner in which the review must be conducted is expressly prescribed by law (in this case the Texas Constitution), then due process and equal protection demand that review be meaningful, fair and adequate in accord with the prescribed law.

Since the Texas Constitution expressly states that Habeas Corpus review MUST be done by a panel of three judges or by the en banc court, the Texas Court of Criminal Appeals can not legally get around this requirement by appointing a proxy judge to act as a quorum of one - BUT THEY DO! (See, Dawson, id).

To add insult to injury, every application for Writ of Habeas Corpus is reviewed by a "Writ Staff Attorney" who drafts memoranda analyzing every claim a prisoner asserts. The single judge (for which the habeas corpus application is randomly appointed) bases their proxy vote on the writ staff attorney's opinion in that memoranda and their recommendation to deny relief.

In essence, the writ staff attorney (who is unelected) is the one making the decision which Habeas Corpus applications receive habeas relief and which ones are denied. Then the single proxy judge votes on behalf of the constitutional quorum.

It is beyond doubt that such is a judicial facade that is depriving all Texas prisoners of meaningful and effectual review of their convictions and sentences. And as such, for as long as this practice has been going on, Texas prisoners have been denied full and fair adjudication of their Habeas Corpus applications.

WHY THIS ISSUE WARRANTS CONSIDERATION

As this Human Rights Council likely knows, Mass Incarceration is a serious issue in the United States of America. The United States only represents 5% of the world's population but a massive 25% of the world's prison population. Texas by itself incarcerates an average of 140,000 people. The Texas incarceration rate is at least 176 points higher than the U.S. average. The Texas incarceration rate is 840 per 100,000 people - higher than any nation on earth. [See, EXHIBIT G].

To systemically deny such a large prison population their right to equal standing before the law and meaningful review, is a human rights violation of such a magnitude as to warrant serious consideration by the UN Human Rights Council. Such international scrutiny may prove to be the impetus for much needed judicial reform in Texas.

Respectfully Submitted,

National Lawyers Guild - Prison Chapter

6th May 2022