

**NO. 14-24-00993-CR**

**IN THE COURT OF APPEALS  
FOR THE FOURTEENTH DISTRICT OF TEXAS  
HOUSTON**

FILED IN  
CLERK'S COURT OF APPEALS  
HOUSTON, TEXAS  
4/9/2025 10:45:24 PM  
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Clerk of The Court

**STATE OF TEXAS,  
APPELLANT**

**V.**

**REYNALDO JOSUE CABEZA-TORRES,  
APPELLEE**

**APPELLEE'S BRIEF**

**On Appeal from Cause No. 17441670101A  
in the 180<sup>th</sup> Judicial District Court  
Harris County, Texas  
The Honorable DaSean Jones, Presiding**

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## **IDENTITY OF PARTIES AND COUNSEL**

Pursuant to TEX. R. APP. PRO. 38.1 a complete list of the names of all parties to this action is as follows:

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Appellee

STATE OF TEXAS, Appellee

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(Appeal and Habeas Review)

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## **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to TEX. R. APP. P. 38.1(e), Appellant respectfully requests an oral argument.

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## **STATEMENT OF FACTS**

Phillip Greene testified at the evidentiary hearing regarding Appellee's writ application. The testimony of Mr. Greene established that he never explicitly advised Appellee about the immigration consequences of his plea because Mr. Greene was never asked to render such advice and that he left Appellee "to his own advice" (I.W.H.R. at 8.9). At that hearing, Mr. Greene also stated that his professional duty was limited to giving advice on criminal matters and nothing else (I.W.H.R. at 7-10.12).

Moreover, Mr. Greene's testimony at the evidentiary hearing indicated he incorrectly informed appellee that a deferred adjudication is not considered a conviction for immigration purposes and that advised immigration consequences, if any, immigration consequences would be "light" (I.W.H.R. at 7.8.9.12).

In addition, Mr. Greene emphasized Appellee would receive special immigration status in this country because of the policy initiatives of Venezuelan President Maduro (I.W.H.R. at 8).

The testimony of Mr. Greene suggests that he was well aware that Appellee was desirous of legal immigration status through marriage with a United States Citizen (I.W.H.R. 18-20).

Phillip Greene also testified that Appellee's primary concern in the criminal case was to avoid prison (I.W.H.R. at 16.17). In support thereof, Mr. Greene indicated the State's case was strong and consisted of three willing witnesses who would have testified Appellee threatened to kill the witnesses (I.W.H.R. at 10.11.15). However, at the hearing no corroborating evidence or details of the case was provided by the State.

At the evidentiary hearing, Raymond Sanchez, a current municipal Judge, testified that he and a Daisy Lozano originally met Mr. Greene at Mr. Greene's law office. Appellee was present at that meeting via telephone communication (I.W.H.R. at 27). Mr. Sanchez testified that Mr. Greene admitted he never advised Appellee about the immigration consequences of the plea and informed Appellee that a deferred adjudication is not a conviction for immigration purposes (I.W.H.R. at 229).

## **STATEMENT OF THE CASE**

On July 20, 2022, Appellee pled guilty to retaliation in the 180<sup>th</sup> District Court of Harris County, Texas, the Honorable DaSean Jones presiding. Appellee was sentenced to three years deferred adjudication community supervision (I.S.C.R. at 100).

Appellee filed a writ of habeas corpus pursuant to Tex. Crim. Code Proc. Art. 11.072, on April 1, 2024, and an amended writ 11.072 Tex. Code Crim Proc. on April 29, 2024. In both filings, Appellee alleged that his trial counsel Phillip Greene rendered ineffective assistance of counsel (I.C. R. 15.39). On June 13, 2024, Mr. Greene filed an affidavit in response to the allegations contained in the writ (I.C.R. at 78-82).

On October 23, 2024, the Court conducted an evidentiary hearing to address the issues raised by the writ (I.W.H.R. at 17). Thereafter, on December 4, 2024, the Court adopted Appellee's proposed findings of fact and conclusions of law and granted habeas corpus relief (I.W.H.R. at 108-114).

On December 19, 2024, the State filed a timely Notice of Appeal (I.C.R. at 102).



## **SUMMARY OF THE ARGUMENT**

Appellee contends that, but for counsel's errors, he would not have pled guilty to retaliation and would have insisted on going to trial.

Plea counsel rendered ineffective assistance of counsel when he failed to properly advise Appellee on the immigration consequences of his guilty plea to retaliation. Plea counsel testified he did not explicitly give immigration advice to Appellee because he was never asked to do so by anyone. Instead, plea counsel left the issue of immigration consequences of the plea to Appellee's "own advice." Plea counsel also stated that he did not feel it was his professional duty to give immigration advice to Appellee because the terms of his employment in Appellee's case limited his representation to criminal matters. Furthermore, plea counsel indicated he did not need to render such advice because he assumed Appellee had consulted an immigration attorney. However, Mr. Greene never referred Appellee to an immigration lawyer. Mr. Greene also failed to obtain advice from any immigration lawyer Appellee may have contacted.

Plea counsel was also deficient because he gave incorrect immigration advice. Plea counsel incorrectly advised Appellee that a deferred adjudication was not a conviction for immigration purposes. In addition, Mr. Greene informed Appellee that the negative immigration consequences of his plea were "light" and

that Appellee would receive special immigration preferences as a result of policy initiatives from the President of Venezuela.

Appellee was prejudiced by plea counsel's deficient representation. The advice Mr. Greene gave Appellee was severely lacking in this case. Moreover, the gravity of this deficiency was exacerbated by the incorrect advice plea counsel gave Appellee on his immigration matters. Appellee was also prejudiced by the lack of any initiative by Mr. Greene to recommend an immigration lawyer to Appellee or to seek advice from an immigration lawyer that Appellee may have contacted. Furthermore, the State did not offer supporting evidence that would substantiate Mr. Greene's testimony at the writ hearing that the State's case was strong; that Appellee benefited from the plea bargain; and that Appellee proceeding to trial would pose a risk.

## **ARGUMENT**

### **POINT OF ERROR**

#### **WHETHER OR NOT APPELLEE RECEIVED EFFECTIVE REPRESENTATION OF COUNSEL BY NOT BEING ADVISED OF THE IMMIGRATION CONSEQUENCES OF HIS GUILTY PLEA.**

##### **A. Standard of Review**

A trial court's ruling on a habeas corpus application is reviewed in a light most favorable to the trial court's ruling and will uphold it absent an abuse of discretion. Kniatt v. State, 206 S.W. 3d 657, 664 (Tex.Crim.App.2006). A trial court does not abuse its discretion if its ruling lies within "the zone of reasonable disagreement." Bigon v. State, 252 S.W. 3d 360, 367 (Tex. Crim.App.2008). Furthermore, the trial judge is the sole trier of fact. Ex Parte Torres, 483 S.W. 3d 35,43 (2016). In addition, in a habeas proceeding, virtually every fact finding involves a credibility determination and the fact-finder is the exclusive judge of the credibility of witnesses. *Id.* at 42. Therefore, the trial court is afforded almost total deference when those findings are supported by the record; especially, when those findings involving credibility and demeanor. *Id.* at 42.

However, appellate review is de novo where mixed questions of law and fact that do not depend on credibility and demeanor are involved. *Id.* at 43.

An applicant for post-conviction writ of habeas corpus bears the burden of proving his claim by preponderance of evidence. Ex Parte Torres, 483 S.W. 3d at 43. To demonstrate habeas corpus relief for ineffective assistance of counsel, an applicant must show that: (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) the applicant was prejudiced as a result of counsel's errors, in that, but for those errors, there is a reasonable probability of a different outcome. *Id.* at 43. In a plea of guilty challenge, the focus of the prejudice inquiry is whether counsel's deficient performance affected the outcome of the plea process, and whether a defendant has shown that but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Id.* at 43.

Under the Sixth Amendment, an attorney for a non-citizen criminal defendant, is required to provide advice about the risk of deportation arising from a guilty plea. Padilla v. Kentucky, 559 U.S. 356, 360, 130 S.Ct.1473 (2010); Ex Parte Torres, 483 S.W. 3d at 43. To that extent, the Padilla Court reasoned that deportation is an integral part, sometimes the most important part, of the penalty that may be imposed on a non-citizen defendant who pleads guilty to specified crimes. Ex Parte Torres, 43 S.W. at 43.

In determining if plea counsel was deficient, counsel's representation is subject to greater scrutiny where the immigration statutes relevant to a client's case were succinct, clear, and explicit. *Id.* at 44.

## B. Deficiency of Counsel

Phillip Greene testified he did not explicitly advise Appellee about the immigration consequences of his guilty plea to retaliation, because he was never asked to (I.W.R. at 8.9). Instead, Mr. Greene stated that he let Appellee rely on his own advice and assumed Appellee received immigration advice from an immigration lawyer. However, Mr. Greene never referred Appellee to an immigration lawyer (I.W.H.R. at 7.8.11.13.15).

Furthermore, Mr. Greene testified that his employment was limited to giving advice on criminal matters and did not include representation involving any immigration related issues (I.W.H.R. at 7.9). In short, Phillip Greene fell well short of satisfying his professional duty in giving meaningful advice about the immigration consequences of the guilty plea of his client. Padilla v. Kentucky, 559, U.S., 356, 369, 130 S.Ct.1473 (2010); Ex Parte Aguilar, 537 S.W. 3d 122, 123 (Tex. Crim. App 2017); Ex Parte Torres, 483 S.W. 3d 35,43 (Tex. Crim. App 2016).

The advice plea counsel gave Appellee about the immigration consequences of his guilty plea was incorrect. Plea counsel informed Appellee that a deferred adjudication is not a final conviction for immigration purposes (I.W.H.R. at 7.8.9.10.12). This is not correct; a deferred adjudication is considered a conviction for immigration purposes. United States v. Moosa, 171 F.3d 994, 998 (5<sup>th</sup> CIR. 1999); Ex Parte Hernandez, 398 S.W. 3d at 371. Plea counsel, Phillip Greene, also informed Appellee that the immigration consequences of the guilty plea was “light”

(I.W.H.R. at 21). In fact, those consequences are severe. Ex Parte Hernandez, supra. Again, plea counsel misinformed Appellee when counsel suggested policy initiatives by the President of Venezuela would ameliorate the impact of the plea on Appellee's immigration interests (I.W.H.R. at 8).

Appellee further contends that the failure of the State to brief the issue of deficiency constitutes a concession that plea counsel was deficient in representing Appellee. Bell v. State, 90 S.W. 3d 301, 305 (Tex.Crim.App. 2002); Brooks v. State 990 S.W. 2d 278, 288 (Tex.Crim.App. 1999).

### C. Prejudice

Prejudice is established by showing by a preponderance of the evidence that a reasonable probability exists that but for counsel's errors, Appellee would have made the rational decision to reject a plea bargain and proceed to trial. Ex Parte Torres, 483 S.W. 3d at 48; Ex Parte Duque, 540 S.W. 3d 136,148 (Tex.App.-Houston [1<sup>st</sup> Dist.] 2017). Whether the decisions are rational is determined by considering several factors that include: the evidence supporting the applicant's assertions; the likelihood of success at trial; a risk benefit analysis of the plea bargain; and the nature of any admonishments given by the court. Id.

The determination of whether or not the decision to reject a plea bargain is rational does not depend on whether a defendant would be acquitted at trial.

Furthermore, it is well accepted by courts that a defendant may rationally be more concerned with a removal than a term of imprisonment. Ex Parte Torres at 48.

The evidence in the case shows the primary concern Appellee had was the preservation of any avenues that existed in the field of immigration law towards legal immigration status. The affidavit of Appellee and testimony of plea counsel indicates Appellee's primary concern in this case was to obtain legal immigration status through marriage with a United States citizen (I.S.C.R 122.123; I.W.H.R at 8-12).

The gravity of plea counsel's deficiency in advising Appellee on immigration matters in this case was extreme. In this case, counsel gave very little advice on immigration matters and the advice that he offered was blatantly incorrect. In addition, evidence supporting Appellee's assertions was strong. It consisted of the testimony of plea counsel.

As a result of this guilty plea, Appellee now faces the possibility of removal and the loss of an opportunity to petition for legal immigration status based on marriage to a United States citizen. See, INA §212(a)(2)(A)(i)(I); 8 U.S.C § 1101(f).

Plea Counsel testified that the State's evidence was strong because it consisted of three witnesses who would have testified Appellee threatened to kill the complainant and her parents (I.W.H.R. at 15.16).

However, this testimony does not establish that Appellee was guilty of retaliation; but, Appellee may have committed the misdemeanor offense of terroristic threat.

Furthermore, no corroborating evidence supports these allegations. This would include evidence such as police reports, witness testimony, testimony of the police officers, testimony of the prosecuting attorney or videotaped evidence. This type of supporting evidence was lacking in this case and has been used by courts to demonstrate no prejudice exists. Ex Parte Torres, 458 S.W. 3d at 50; Ex Parte Ali, 368S.W. 3d 827, 40 (Tex. Crim. App. – Austin 2012).

The record does not show that if Appellee would have proceeded to trial, he would not have received probation, or an acquittal in the retaliation case, or a conviction for the lesser included offense of misdemeanor terroristic threat. In other words, the record is insufficient to determine the benefits of the plea bargain and the risks of going to trial for the Appellee on this case.

In conclusion, Appellee has properly pled this case by asserting, but for his plea counsel's errors, Appellee would not have pled guilty. Appellee did not have to plea "would have proceeded to trial" to constitute a valid pleading in this case. Ex Parte Aguilar, 537 S.W. 3d at 370. Moreover, Appellee asked this Honorable Court to consider and give deference to the trial court's findings of fact and conclusions of law in granting this writ.



**PRAYER**

**WHEREFORE, PREMISED CONSIDERED,** Appellee respectfully prays that the decision of the 180<sup>th</sup> Judicial District Court of Harris County granting Appellee's writ of habeas corpus be affirmed.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to TEX. R. APP. PRO. 9.4, I, RALPH R. MARTINEZ, hereby certify that the foregoing *Appellee's Brief* conforms with the requirements of the Texas Rules of Appellate procedure, and relying on the word count function used to prepare this document, it contains approximately 2,162 words, excluding non-inclusive content identified in TEX. R. APP. PRO. 9.4 (i)(1).

By: /s/ RALPH R. MARTINEZ  
RALPH R. MARTINEZ  
ATTORNEY AT LAW

### **CERTIFICATE OF SERVICE**

I, RALPH R. MARTINEZ, hereby certify that on April 09, 2025, a true and correct copy of the forgoing *APPELLEE'S BRIEF* was served on the following:

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*Via Electronic Filing*

By: /s/ RALPH R. MARTINEZ  
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### **Automated Certificate of eService**

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