

TEXAS COURT OF CRIMINAL APPEALS

Ex parte Michael Ibenyenwa v. The State of Texas

Ibenyenwa · Decided January 26, 2015

SUMMARY

This document is a pro se request by Michael Ibenyenwa asking the Texas Court of Criminal Appeals to rehear its denial of his state habeas corpus application. The filing raises issues concerning preservation of a constitutional challenge to Texas Penal Code section 21.02, ineffective assistance of counsel, and jury unanimity.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	January 26, 2015
DISPOSITION	other
PROCEDURAL POSTURE	Applicant filed a pro se request asking the Texas Court of Criminal Appeals to rehear its January 14, 2015 denial of his application for a writ of habeas corpus.
PRECEDENTIAL VALUE	nonprecedential filing
PARTIES	Michael Ibenyenwa v. The State of Texas

TOPICS

state post-conviction relief habeas corpus appellate procedure preservation of error ineffective assistance

PRACTICE AREAS

criminal procedure state post-conviction relief constitutional law ineffective assistance of counsel
appellate procedure

QUESTIONS PRESENTED

- Whether the Texas Court of Criminal Appeals should rehear its denial of the applicant's state habeas petition.
- Whether an unpreserved facial or as-applied constitutional challenge to Texas Penal Code section 21.02 may be raised for the first time in a first state habeas proceeding.

3. Whether trial counsel was ineffective for failing to object to or otherwise preserve a constitutional challenge to section 21.02.

KEY QUOTATIONS

"A facial challenge to the Constitutionality of a Statute is a forfeitable right, that is, it may be lost by the failure to insist upon it by objection, request, motion, or some other behavior." (at 2)

FACTUAL BACKGROUND

The applicant was convicted or otherwise proceeded against under Texas Penal Code section 21.02, the continuous sexual abuse statute. He contends that the statute is unconstitutional because it eliminates jury unanimity and argues that trial counsel was ineffective for failing to preserve that constitutional challenge. The filing also relies on the asserted availability of constitutional and ineffective-assistance claims in a first state habeas proceeding.

PROCEDURAL HISTORY

The underlying habeas proceeding arose from Tarrant County Criminal District Court No. 3, trial court cause number C-3-010068-1149004-A. The applicant states that the trial court did not rule on a constitutional challenge to Texas Penal Code section 21.02, that the intermediate appellate court treated the issue as unpreserved, and that the Court of Criminal Appeals denied habeas relief on January 14, 2015. This document requests rehearing of that denial.

DISPOSITION

other

CASES CITED

- Karenev v. State, 281 S.W.3d 428, 432-434 (Tex. Crim. App. 2009)
- Richardson v. United States, 526 U.S. 813, 119 S. Ct. 1707, 143 L. Ed. 2d 985 (1999)
- Strickland v. Washington, 466 U.S. 668 (1984)

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