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TIBA's Case of the Week

Case Name: Ex parte Daniel Villegas

- OFFENSE: Post-Conviction Habeas Corpus / Capital Murder - Life Sentence
- COUNTY: El Paso
- CCA. CASE No. WR-78,260-01 DATE OF OPINION: December 18, 2013
- DISPOSITION: Relief Granted
- OPINION: Per Curiam VOTE: 8-1-0
- TRIAL COURT: 41st D/C; Hon.
- LAWYERS: Joe Spencer & John Mobbs (Defense)

563.01 Post-Conviction Habeas Corpus / Sufficiency of Supporting Evidence / Actual Innocence: In 1996, Applicant was convicted of capital murder and sentenced to life imprisonment. The 8th Court of Appeals affirmed in 1997 (unpublished). In this application, Applicant alleged that he received ineffective assistance of counsel, and that he is actually innocent. The trial court held a series of live hearings and determined that counsel was ineffective and Applicant is actually innocent under Schlup v. Delo, 513 U.S. 298 (1995).

Holding: [W]e agree that Applicant is entitled to relief due to ineffective assistance of counsel, but disagree that he has shown he is actually innocent. In a Schlup actual-innocence claim, evidence demonstrating innocence is a prerequisite the applicant must satisfy to have an otherwise barred constitutional claim considered on the merits. *** In this case, the trial court found that Sixth Amendment ineffective assistance of counsel violations, combined with the cumulative evidence of innocence, showed that Applicant was actually innocent. Because Applicant's ineffective assistance of counsel claims are not procedurally barred as subsequent, a Schlup innocence claim dependent on them is improper. We further find that Applicant has not shown that new facts "unquestionably establish" his innocence. Ex parte Elizondo, 947 S.W.2d 202, 209 (Tex.Cr.App. 1996)(see Vol. 4, No. 49; 12/18/1996). However, we agree Applicant has demonstrated that counsel was ineffective for not presenting evidence of possible alternative perpetrators and for not discovering and presenting evidence that would have allowed the jury to give effect to the voluntary confession jury instruction submitted in this case.

Concurring / Dissenting Opinions: Judge Price filed a concurring opinion in which he argued that for the "Court to continue to 'recognize' so-called 'Schlup innocence claims' does a disservice to the bench and bar and engenders the kind of misunderstanding that the convicting court exhibited in this case." He claims there "really no such thing as a 'Schlup actual innocence claim' in Texas . . .," but that a Schlup claim "merely operates as a mechanism to permit consideration of other constitutional claims that would otherwise be procedurally barred because raised for the first time in a subsequent writ application."

Sidebars: (David A. Schulman) Judge Price hits right on the mark. Since Elizondo and Mowbray, 943 S.W.2d 461 (Tex.Cr.App. 1996)(see ☙, Vol. 4, No. 49; 12/18/1996), there has been confusion regarding certain "newly" discovered or available evidence cases. In Ex parte Brown, 205 S.W.3d 538 (Tex.Cr.App. 2006)(see ☙, Vol. 14, No. 43; 11/06/2006), the Court said it recognized two types of "innocence" claims, meaning Schlup claims and "actual innocence" claims such as raised in Herrera v. Collins, 506 U.S. 390 (1993). By now, it should be recognized that there are two problems with this statement. First, one need not be raising a "the newly discovered evidence shows I didn't do it" claim in order to be entitled to relief under Schlup. Certainly that was the case in Mowbray, and the more recent and equally confusing decision in Ex parte Henderson, 384 S.W.3d 833 (Tex.Cr.App. 2012)(see ☙, Vol. 20, No. 49; 12/10//2012). Second, as Judge Price points out, the feds have never recognized any defendant as being entitled to relief under a Herrera "the newly discovered evidence shows I didn't do it' claim." Thus, what the Court's statement in Brown should have said was that Texas recognizes two types of "innocence" claims, Elizondo claims and Mowbray claims. (Alan Curry) I agree wholeheartedly. Terminology is very important, and Judge Price appears to have gotten this right. But I would not include Ex parte Henderson in this discussion. I have no idea what the holding in that case is, and I never will.