

Decided by the Supreme Court of the United States on June 15, 2020
Now pending before the Texas Court of Criminal Appeals

Terence Andrus is a youthful offender confined on Texas's death row for the shooting deaths of two individuals in a Texas supermarket parking lot in 2008 during an attempted carjacking while he was high on marijuana laced with PCP. He seeks a new sentencing hearing.

To learn more beyond this fact sheet, you can read [Terence's own words and essay](#), recently published by the Harvard Law Review.

Terence was appointed a deficient trial lawyer who failed to properly advocate for Terence

- » After his arrest, Terence provided a videotaped and written confessions, helped the police find the gun used in the shooting and other evidence, and asked to be able to apologize to the victims' families.
- » Because Terence was indigent, a lawyer was appointed to represent him. But that lawyer did not meet with Terence or even tell him that a lawyer had been appointed for over eight months.
- » During that time, he became mentally unhinged with remorse, despair, drug withdrawal, and long untreated mental illness. But the State's argument was that his pre-trial conduct showed that he would be a "future danger" and thus should be put to death.
- » Terence's trial lawyer, a former prosecutor, was notorious in Texas for his poor representation in capital cases when appointed to represent Terence. Before Terence's trial he had already been removed from a death-penalty case for failing to do any work where a person's life was at stake.
- » After Terence's own trial, during the post-conviction habeas proceeding, Terence's lawyer admitted that he had conducted no independent investigation of the crime or of the State's "future dangerousness" case.
- » Deficient defense counsel never retained a new mitigation specialist after one quit in protest because no work was being done. And this lawyer never conducted any mitigation investigation himself. He spent much of trial in what was likely an alcohol-induced stupor.

Terence was sentenced to die by a jury that heard nothing about [Terence's child abuse and traumas](#)

- » At trial, defense counsel continued his deficient performance, waiving opening statements and then conceding his client's guilt in closing arguments after having put on no defense.
- » At the sentencing hearing, dominated by the State's uncontested presentation of Terence's past misconduct, the mitigation presentation was so distorted that Terence elected to testify himself.
- » Then, in closing arguments, Terence's own lawyer complimented the prosecution and told the jury that they would likely find his client to be a future danger in light of the State's case.
- » He asked the jury to spare his client's life anyway without making any argument about why that life merited mercy—because the lawyer had done no mitigation investigation and thus had no meaningful mitigation evidence to which to refer.
- » The prosecution pointed to the lack of any mitigation evidence as the reason to sentence Terence to death. The jury, thus, followed the prosecution's recommendation sentencing Terence to execution.

Post-conviction hearings revealed important evidence of abuse and trauma the jury never heard

- » Post-conviction counsel argued that Terence was denied effective assistance of counsel because of his lawyer's failure to investigate and present readily available mitigating evidence.
- » In an evidentiary hearing that lasted held over eight days, voluminous documentary evidence was admitted, along with both lay and expert witness testimony about Terence's bleak childhood.
- » Mitigation evidence included Terence's being forced to care for four siblings in a chaotic, drug-infested home, traumatic experiences at the hands of the State's juvenile justice system, the Texas Youth Commission, now largely shut down following a child sex abuse scandal involving staff

Habeas judge recommended Terence be granted relief because of trial lawyer's failure to do his job

- » The presiding judge in the habeas proceeding took pains to draft his own findings of fact and conclusions of law—a rare occurrence in Texas death-penalty cases.
- » He recommended that Terence be granted habeas relief in the form of a new punishment-phase trial because his appointed trial lawyer had failed to investigate and present mitigation evidence.

Texas Court of Criminal Appeals rejected the habeas judge's recommendation for new sentencing

- » The trial court's recommendation, issued on September 8, 2017, then went to the Court of Criminal Appeals (Texas's highest court for criminal cases) – referred to here as the CCA.
- » After a year and a half, on February 13, 2019, the CCA issued a short opinion, rejecting the habeas court's recommendation of habeas relief without discussing any of that court's findings.
- » Nor did the CCA discuss any of what the habeas court had referred to as a "tidal wave of mitigation evidence" presented during the post-conviction proceeding.

The United States Supreme Court intervened in Terence's case and found deficient representation

- » Terence then appealed to the Supreme Court, which intervened in light of the clearly deficient representation Terence received by his appointed lawyer at his death penalty sentence hearing. It has now returned the case to the CCA to decide if Terence had been prejudiced as a result.
- » In doing so, it reminded the Texas CCA that "prejudice here requires only 'a reasonable probability that at least one juror would have struck a different balance' regarding [defendant's] 'moral culpability'" if they heard the mitigating evidence presented in the habeas proceeding. *Andrus v. Texas*, 140 S.Ct. 1875, 1886 (2020) (internal citation and quotation omitted).

The CCA will decide whether to grant Terence a new sentencing hearing

- » The CCA has denied a request for oral argument in the case and marked the case as submitted as of December 2, 2020.
- » At any point thereafter, the judges on the CCA will decide whether to grant Terence a new punishment-phase trial. If he is granted a new trial, the punishment options under Texas law are only life without the possibility of parole or death.

FOR MORE INFORMATION

Mae C. Quinn, mae.quinn@udc.edu, Director, Youth Justice Clinic
University of the District of Columbia David A. Clarke School of Law