

361 S.W.3d 684
Court of Criminal Appeals of Texas.

Ex parte Max MOUSSAZADEH, Applicant.

Nos. AP-76,439, AP-74,185.

|
Feb. 15, 2012.

Synopsis

Background: After pleading guilty to murder, and after his murder conviction was affirmed on appeal, 962 S.W.2d 261, applicant sought a writ of habeas corpus, contending that his mistaken understanding of parole eligibility based on misinformation counsel conveyed to him rendered his guilty plea involuntary. The 232nd District Court, Harris County, A.D. Azios, J., entered findings of fact supporting relief. The Court of Criminal Appeals, 64 S.W.3d 404, denied relief. Applicant filed subsequent habeas application, and a suggestion for reconsideration asking the Court of Criminal Appeals, on its own motion, to reconsider its denial of initial habeas application.

Holdings: The Court of Criminal Appeals, Johnson, J., held that:

it would reconsider, on its own initiative, applicant's initial habeas application;

question of whether parole eligibility forms an affirmative part or essential element of the plea agreement is not determinative of court's deficient performance inquiry under *Strickland*; abrogating, *Ex parte Evans*, 690 S.W.2d 274;

counsel's misinformation to defendant as to his parole eligibility constituted deficient performance; and

counsel's error prejudiced defendant, and thus was ineffective assistance.

Relief granted upon reconsideration.

Keller, P.J., concurred in judgment, with opinion.

Attorneys and Law Firms

*686 Randy Schaffer, Houston, for Appellant.

Andrew J. Smith, Asst. D.A., Houston, Lisa C. McMinn, State's Attorney, Austin, for State.

OPINION

JOHNSON, J., delivered the opinion of the Court in which PRICE, WOMACK, KEASLER, HERVEY, COCHRAN, and ALCALA, JJ., joined.

Applicant pled guilty to the offense of murder without an agreement for punishment. The trial court accepted the plea and sentenced applicant to seventy-five years' incarceration. On direct appeal, the court of appeals affirmed the judgment of the trial court. *Moussazadeh v. State*, 962 S.W.2d 261 (Tex.App.-Houston [14th Dist.] 1998, pet. ref'd) (*Moussazadeh I*). Thereafter, applicant filed an application for habeas corpus relief. In a published opinion, we denied relief because applicant "failed to prove, by a preponderance of the evidence, that his plea was induced by a misunderstanding of the applicable parole law which formed an essential element of the plea agreement." *Ex parte Moussazadeh*, 64 S.W.3d 404, 413 (Tex.Crim.App.2001), cert. denied, 537 U.S. 813, 123 S.Ct. 74, 154 L.Ed.2d 16 (2002) (*Moussazadeh II*, # AP-74,185). Applicant filed a subsequent application for writ of habeas corpus, *Moussazadeh III*, # AP-76,439, that *687 asserts that trial counsel's mistaken advice regarding parole eligibility rendered his plea involuntary. We ordered the subsequent application filed and set for submission. After applicant filed the subsequent application, he also filed a suggestion for reconsideration that asks this Court, on its own motion, to reconsider its decision in *Moussazadeh II*.

This Court, on its own initiative, may reconsider a prior denial of habeas corpus relief. Tex.R.App. P. 79.2(d). We now reconsider, on our own initiative, the claim raised in applicant's second application for writ of habeas corpus, *Moussazadeh II*,¹ and grant relief. Applicant's subsequent application, *Moussazadeh III*, is dismissed.

In *Moussazadeh II*, we discussed how applicant, under indictment for a capital murder committed on September 12, 1993, pled guilty to the reduced offense of murder without a sentencing agreement. Applicant, a juvenile at

the time of the offense, served as “look-out” while one of his three co-defendants shot and killed a man during a robbery. *Moussazadeh II*, 64 S.W.3d at 406–07. While initially rejecting the state's offer of a guilty plea to the lesser offense of murder, ultimately applicant agreed to plead guilty to murder without a punishment agreement. The agreement included applicant's promise to testify at a co-defendant's trial, which he did. *Id.* at 407–09. During that testimony, applicant indicated that he understood that, in pleading guilty to the murder offense and because of parole-eligibility laws, he was facing a significantly lesser term of imprisonment than he would have faced if convicted of capital murder. *Id.* at 408–09. After the co-defendant's trial ended, applicant was sentenced to seventy-five years' incarceration without a deadly-weapon finding. *Id.* at 409.

Applicant's claim in his previous writ application, which we now reconsider, asserted that “counsel's gross misadvice regarding parole eligibility rendered applicant's guilty plea involuntary.” He argued that “the matter of parole eligibility was implicitly incorporated in [his] plea agreement.” He also argued that his “guilty plea was involuntary even if the matter of parole eligibility was not implicitly incorporated in the plea agreement.” We quote from our opinion in *Moussazadeh II*.

It is quite possible that no one in this proceeding knew that the parole law had changed dramatically just 11 days before this robbery-murder. Applicant's parole eligibility is measured by the law in effect on the date of the offense. Under the law effective *until* September 1, 1993, a person serving a life sentence for capital murder was not eligible for parole until serving a flat 35 years. Tex.Code Crim. Proc. Art. 42.18, § 8(b)(2). *After* September 1, 1993, that person was not eligible for parole until serving a flat 40 years. Tex.Code Crim. Proc. Art. 42.18, § 8(b)(2) (effective Sept. 1, 1993). Under the law effective *until* September 1, 1993, a person whose conviction included a deadly weapon finding was not eligible for parole until he had served a flat one-fourth of his sentence, up to a maximum of 15 years. Tex.Code Crim. Proc. Art. 42.18, § 8(b)(3). *After* September 1, 1993, a person whose conviction contained a deadly weapon finding was required to serve a flat one-half *688 of the sentence up to a maximum of 30 years. Tex.Code Crim. Proc. Art. 42.18, § 8(b)(3) (effective Sept. 1, 1993). Under the law effective *until* September 1, 1993, a person convicted of murder (but whose conviction did not contain a deadly weapon finding) was eligible for parole when his good time plus flat time equaled one-quarter of the sentence up to 15 years. Tex.Code Crim. Proc. Art. 42.18, § 8(b)(3). *After* September 1, 1993, a person

convicted of murder was not eligible for parole until he had served one-half of his sentence or 30 years. Tex.Code Crim. Proc. Art. 42.18, § 8(b)(3) (effective Sept. 1, 1993).

The affidavits submitted by both applicant and his trial counsel with his habeas application state that they did not know of these statutory changes. Indeed, we may fairly infer from the record that the judge, prosecutor, and [the co-defendant's] counsel shared the same misunderstanding. However, neither trial counsel's nor applicant's affidavits state that the prosecutor agreed to make applicant's parole eligibility a term or essential element of the plea agreement. There is no evidence that the prosecutor ever discussed any specific term or particular percentage of the sentence that he believed applicant should or would serve in return for the prosecutor's dropping the charges from capital murder to straight murder. In sum, we are unable to find any evidence that proves the prosecutor or judge caused applicant to plead guilty based upon an incorrect understanding of Texas parole law. [Citation omitted.]

Id. at 409–10.

In *Moussazadeh II*, we held that a finding that parole eligibility formed an essential part of a plea agreement must be founded upon the express terms of the written plea agreement itself, the formal record at the plea hearing, or the written or testimonial evidence submitted by both the prosecution and the applicant in a habeas proceeding. *Id.* at 412. We were “unable to conclude ... that parole eligibility played any part, implicit or explicit, in the plea agreement made between the prosecution and applicant.” *Id.* at 413. We therefore “den[ie]d applicant relief because he ... failed to prove, by a preponderance of the evidence, that his plea was induced by a misunderstanding of the applicable parole law which formed an essential element of the plea agreement.” *Id.* Acknowledging our prior holdings that a guilty plea is not rendered involuntary simply because the defendant received and relied upon erroneous advice of counsel concerning parole eligibility, and that both parole eligibility and parole attainment are highly speculative future facts, we likewise rejected applicant's contention that his plea was involuntary regardless of whether the parole eligibility misinformation was implicitly incorporated into the plea agreement. *Id.* at 413–14.

The circumstances surrounding applicant's conviction are not in dispute. Prior to applicant's plea, trial counsel advised applicant about his parole eligibility, and that advice was incorrect. As we stated in *Moussazadeh II*, “The affidavits submitted by both applicant and his trial counsel with

his habeas application state that they did not know of these [recently effective] statutory changes [in the parole-eligibility law]. Indeed, we may fairly infer from the record that the judge, prosecutor, and counsel for [the co-defendant against whom applicant testified] shared the same misunderstanding.” *Moussazadeh II*, 64 S.W.3d at 410.

Counsel's advice can provide assistance so ineffective that it renders a guilty plea involuntary. *689 *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); “voluntariness of the plea depends on whether counsel's advice ‘was within the range of competence demanded of attorneys in criminal cases.’”). A guilty plea is not knowing or voluntary if made as a result of ineffective assistance of counsel. *Ex parte Burns*, 601 S.W.2d 370, 372 (Tex.Crim.App.1980). A defendant's decision to plead guilty when based upon erroneous advice of counsel is not done voluntarily and knowingly. *Ex parte Battle*, 817 S.W.2d 81, 83 (Tex.Crim.App.1991). See also *Ex parte Harrington*, 310 S.W.3d 452, 459 (Tex.Crim.App.2010) (“When counsel's representation falls below this [*Strickland*] standard, it renders any resulting guilty plea involuntary.”).

Applicant's initial application contended that “counsel's gross misadvice regarding parole eligibility rendered applicant's guilty plea involuntary,” “the matter of parole eligibility was implicitly incorporated in [his] plea agreement,” and that his “plea agreement was involuntary even if the matter of parole eligibility was not implicitly incorporated in the plea agreement.” Applicant now asks this Court to reconsider his application in light of *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), and overrule our previous decisions in *Ex parte Evans*, 690 S.W.2d 274 (Tex.Crim.App.1985), and *Moussazadeh II*.

The state contends that *Padilla* has no bearing upon the Court's disposition of applicant's claim and that *Ex parte Evans* and *Moussazadeh II* are “still based upon sound logic regarding parole eligibility and parole attainment as being highly speculative circumstances that does [sic] not render a guilty plea involuntary.”

We conclude that both applicant and the state are partly correct: *Padilla* is not applicable to the facts before us, and our decisions in *Ex parte Evans* and *Moussazadeh II* were incorrect. We now disavow our prior decisions in *Ex parte Evans* and *Moussazadeh II* to the extent that they (1) require *parole-eligibility* misinformation to form an essential

part of the plea agreement in order to make a showing of an involuntary plea that resulted from ineffective assistance of counsel, based upon such misinformation and (2) fail to appropriately recognize the distinction between *parole eligibility* and *parole attainment*.

We have previously held that, because of the extremely speculative nature of parole attainment, advice from counsel concerning parole does not render a plea involuntary. *Ex parte Evans*, 690 S.W.2d at 279. However, *Evans* stated that, because “eligibility for parole is a fluctual [sic] societal decision; highly subject to change,” *id.* at 278, an applicant must prove, by a preponderance of the evidence, that parole eligibility was an affirmative part or essential element of the plea bargain.² *Id.* This is an incorrect statement of the law. While the general eligibility rules for parole may change over time, the eligibility rules remain the same for a given conviction. Likewise, an inmate who was eligible for mandatory release at the time of the offense remains eligible for mandatory release on that conviction, even if that offense subsequently becomes eligible for only discretionary mandatory release. “The statute in effect when the holding offense is committed determines an inmate's eligibility for release on mandatory *690 supervision or parole.” *Ex parte Thompson*, 173 S.W.3d 458, 459 (Tex.Crim.App.2005). *Evans* held that, because parole attainment was speculative, its “legal importance on the subject of voluntariness of a guilty plea” should be “discounted.” *Ex parte Evans*, 690 S.W.2d at 279. Then, based on its incorrect statement of law, *Evans* made an erroneous logical leap and applied the same standard to parole eligibility. As a result, *Evans* held that erroneous advice as to either parole eligibility or parole attainment would not render a plea involuntary. *Id.* In *Moussazadeh II*, we further conflated the concepts of eligibility and attainment.

Although one can determine current parole eligibility with some degree of certainty, it is really parole attainment that is significant to a plea bargaining defendant. It matters very little that a person is eligible for parole in one year on a ten year sentence if virtually no one is being paroled in less than seven or eight years on a ten year sentence. It is for this reason that we have termed parole attainment “too speculative to warrant being given effect upon” a defendant's guilty plea.

64 S.W.3d at 413, quoting *Evans, supra*.

Contrary to our prior decisions, there are considerable, concrete distinctions between *parole attainment* and *parole*

eligibility. Parole attainment is indeed highly speculative, due to various factors associated with circumstances surrounding an individual prisoner's parole application, such as the prisoner's behavior in prison, the composition and attitude of the parole board, the identity and attitude of the governor, the population of the prison system, and regulations governing "good time." See *Ex parte Carillo*, 687 S.W.2d 320, 325 (Tex.Crim.App.1985) (Miller, J., concurring). The question of parole eligibility, however, elicits a straightforward answer because an applicant's parole eligibility is determined by the law in effect on the date of the offense. *Ex parte Thompson*, 173 S.W.3d at 459. The statutes that govern the punishment of a particular offense control the issue of parole eligibility and are not subject to alteration, absent legislative amendment. Even in the event of a legislative amendment making a law more stringent, an applicant is subject only to the law governing parole eligibility at the time the offense was committed. See *Ex parte Alegria*, 464 S.W.2d 868, 874–75 (Tex.Crim.App.1971) (retroactive application of parole statute that increased defendant's cumulation of years required for parole eligibility violated *ex post facto* clauses of United States and Texas Constitutions).³ Parole-eligibility requirements are direct consequences because they are a definite and largely automatic result of a guilty plea. See *Mitschke v. State*, 129 S.W.3d 130, 135 (Tex.Crim.App.2004). Parole attainment, on the other hand, is not governed by statute and is granted at the discretion of the parole board.

On a claim of involuntary plea, the standard for the analysis of harm under the *Strickland* protocol as expressed in these cases may be stated generally as "but for the erroneous advice of counsel, the applicant *691 would not have plead guilty." *Ex parte Harrington*, 310 S.W.3d at 458. See also *Ex parte Moody*, 991 S.W.2d 856, 858 (Tex.Crim.App.1999); *Ex parte Stephenson*, 722 S.W.2d 426, 428 (Tex.Crim.App.1987).

When deciding whether to accept or reject a plea offer, a defendant will likely consider the actual minimum amount of time he will spend incarcerated. In order to properly consider his options, a defendant needs accurate information about the law concerning parole eligibility. Although we continue to recognize the distinction between direct and collateral consequences, we now hold that the question of whether parole eligibility forms an affirmative part or essential element of the plea agreement is not determinative of this Court's deficient-performance inquiry under *Strickland*.

To obtain habeas corpus relief on a claim of involuntary plea, an applicant must meet both prongs of the *Strickland*

standard: (1) counsel's performance "was deficient; and (2) that a probability exists, sufficient to undermine our confidence in the result, that the outcome would have been different but for counsel['s] deficient performance." *Ex parte White*, 160 S.W.3d 46, 49 (Tex.Crim.App.2004). In the context of involuntary plea, the "different outcome" is choosing not to plead and instead choosing to go to trial.

Counsel's performance is deficient if it is shown to have fallen below an objective standard of reasonableness. *Id.* at 51; *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The constitutionally appropriate level of reasonableness is defined by the practices and expectations of the legal community and prevailing professional norms therein. *Strickland, supra*, at 688, 104 S.Ct. 2052. In situations in which the law is not clear, counsel should advise a client that pending criminal charges may carry a risk of other serious consequences. When a serious consequence is truly clear, however, counsel has an equally clear duty to give correct advice. Both failure to provide correct information and providing incorrect information violate that duty.

The terms of the relevant parole-eligibility statute are succinct and clear with respect to the consequences of a guilty plea. Based upon the date in which the instant offense was committed, Tex.Code Crim. Proc. art. 42.18 § 8(b)(3) clearly and succinctly provided that "a person convicted of murder was not eligible for parole until he had served one-half of his sentence or thirty years." *Moussazadeh II, supra*, at 409. Applicant's counsel could have easily determined the applicable parole-eligibility requirements simply by reading the text of the statute. Instead, applicant's counsel failed to inform him of changes in the parole-eligibility statutes that essentially doubled the length of time he must serve before becoming eligible for parole. The fact that the amendments took effect only eleven days before the offense is of no consequence.⁴

The performance of applicant's counsel was deficient: the consequences of applicant's plea could have been easily determined by reading the applicable statute. Parole-eligibility requirements are presumptively mandatory, and applicant's trial counsel provided incorrect advice. We *692 conclude that applicant has sufficiently proved that his counsel was constitutionally deficient.

The portion of applicant's sentence that must be served before he becomes eligible for parole was double the portion that

he was led to believe he must serve. Based on applicant's affidavit of January 13, 1997,⁵ we also conclude that applicant would not have pled guilty if he had known the actual time he would have to serve, and thus prejudice is shown. We find that the habeas court's findings of fact and conclusions of law are supported by the record and agree that relief should be granted.

Accordingly, upon reconsideration, we grant relief. The judgment in this cause is hereby vacated, and applicant is remanded to the custody of the Harris County Sheriff to answer the charges set out in the indictment. The trial court shall issue an appropriate bench warrant within ten days after the mandate of this Court issues. Copies of this opinion shall be sent to the trial court and to the Texas Department of Criminal Justice, correctional institutions division.

KELLER, P.J., filed a concurring opinion. MEYERS, J., did not participate.

KELLER, P.J., concurring.

In overruling *Ex parte Evans*,¹ the Court creates a new rule of constitutional law. Under *Teague*, with some exceptions, federal courts may not announce or apply new rules of constitutional law on collateral review.² The states are not bound by the *Teague* rule and may afford retroactive effect on collateral review in situations not allowed under *Teague*.³ Nevertheless, with respect to the new Confrontation Clause holding articulated in *Crawford v. Washington*,⁴ we applied the rule in *Teague* to bar retroactive application on habeas corpus.⁵ The Court does not conduct a retroactivity analysis in this case, and I do not know its reason for making the new rule retroactive. Has the Court abandoned *Teague* altogether in favor of its own retroactivity analysis? Does it intend to adhere to *Teague*, but with state-created exceptions? Do any exceptions—articulated in *Teague* or state-created—apply in the present case? If the Court is going to overrule prior precedent on habeas review, as it does here, I believe that it should clearly explain how this fits into our retroactivity jurisprudence.

There is an easier way to resolve this case. During the plea colloquy, the trial judge was prepared to make a deadly weapon finding, but the parties explained that the issue was to be left open for the judge to determine at punishment, which would be assessed after applicant testified against a

co-defendant in accordance with the plea agreement.⁶ This explanation was consistent with the parties agreeing *693 that applicant would have his chance, after cooperating with the State, to persuade the trial judge to make his time “non-aggravated,” i.e. subject to more generous parole-eligibility rules available to non-3g offenses.⁷ But less than two weeks before the offense had been committed, the law had changed to treat murder as an “aggravated” offense for parole-eligibility purposes, regardless of whether there was a deadly-weapon finding.⁸ In its findings of fact on applicant's original habeas application, the habeas judge found that the prosecutor and the trial judge ratified defense counsel's misinformation about parole eligibility “by attaching significance to the deadly weapon finding.”⁹ The habeas judge recommended that applicant be granted a new trial.

In our original opinion on applicant's habeas application, we declined to follow the habeas judge's finding, and her ultimate recommendation, because it required “too many inferences stacked upon each other” for the deferral of the deadly weapon issue “to support a finding that it was the parties' clear intention that parole eligibility was an essential element of the plea bargain.”¹⁰ We cited no authority for this “inference-stacking” holding,¹¹ and thus it does not appear to be based upon an established rule that we would have to change. Moreover, with regard to the advice given in *Evans*, we said in that case:

No overt sanctioning of this advice by the judge or the prosecutor appears in the record and it does not appear to have been a part of the plea bargain. We realize that it is common for the parties to play the guessing game of parole eligibility in plea negotiations. We decline, however, to elevate this common practice to the status of an element of the plea bargain without some further indication from the record evidencing that status. We conclude, then, that we are not dealing with a broken or impossible plea bargain situation.¹²

Unlike in *Evans*, there was overt sanctioning of the attorney's advice by the judge and the prosecutor, or at least the habeas court could so rationally conclude, as it has done. Thus, we simply misanalyzed the issue under *Evans*, and it is appropriate for us to reconsider the issue now.

Further, since our original opinion in this case, we have decided *Hooper*, where we indicated that inference stacking was not necessarily irrational and that we should focus, not

on whether inferences are being stacked, but simply on the rationality of the inferences in addressing the sufficiency of the evidence to support a conviction.¹³

Finally, I would not hold, as the Court appears to do,¹⁴ that the simple failure to *694 convey information about parole eligibility renders a guilty plea involuntary. We need not address whether counsel has an obligation to convey information about the parole consequences of a plea. In this case, it is enough to hold that, if counsel does convey this type

of information, he must do so correctly. Here, the information was incorrect.

Although I agree that applicant is entitled to a new trial, I do not join the Court's opinion. I concur in the Court's judgment.

All Citations

361 S.W.3d 684

Footnotes

- 1 Applicant's first application sought an out-of-time appeal, which we granted. *Ex parte Moussazadeh*, No. AP–72,200 (Tex.Crim.App. delivered October 25, 1995) (not designated for publication). Such an initial application seeking an out-of-time appeal does not constitute a challenge to the conviction and does not bar subsequent writ applications. *Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex.Crim.App.2000).
- 2 See also *Ex parte Trahan*, 781 S.W.2d 291, 292–93 (Tex.Crim.App.1989) (written plea memorandum reflected that applicant would become eligible for parole consideration after having served one-fourth of sentence; habeas relief available when that was not the law and terms of plea agreement were impossible to fulfill).
- 3 A law that changes the punishment for a crime after the crime has been committed is an unconstitutional *ex post facto* law only if it inflicts a greater punishment than did the previous law. *Ex parte Tate*, 471 S.W.2d 404, 406 (Tex.Crim.App.1971) (op. on reh'g); *Ex parte Scott*, 471 S.W.2d 54, 55–6 (Tex.Crim.App.1971). “[A] statute which mitigates the rigor of the law in force at the time a crime was committed cannot be regarded as *ex post facto* with reference to that crime.” *Rooney v. North Dakota*, 196 U.S. 319, 325, 25 S.Ct. 264, 49 L.Ed. 494 (1905).
- 4 Parole eligibility is not speculative. In this case, parole eligibility was statutorily determined and, at the time of the plea, there was no speculation about those statutory terms. Those terms of parole *eligibility* were clear, succinct, and explicit. It appears that all parties involved were unaware that parole eligibility had changed significantly just a few days before the commission of the alleged offense.
- 5 “Had Judge Azios, Mr. Jones, or Mr. Cogdell told me that a murder conviction would require me to serve aggravated time of one-half of my sentence, up to a maximum of 30 years, even without a deadly weapon finding, I would not have accepted the plea bargain.”
- 1 690 S.W.2d 274 (Tex.Crim.App.1985).
- 2 *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).
- 3 *Danforth v. Minnesota*, 552 U.S. 264, 128 S.Ct. 1029, 169 L.Ed.2d 859 (2008); *Ex parte Lave*, 257 S.W.3d 235, 237 & n. 15 (Tex.Crim.App.2008).
- 4 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).
- 5 *Lave*, 257 S.W.3d at 237; *Ex parte Keith*, 202 S.W.3d 767 (Tex.Crim.App.2006).
- 6 See *Ex parte Moussazadeh*, 64 S.W.3d 404, 408 (Tex.Crim.App.2001).
- 7 See Tex.Code Crim. Proc. art. 42.12 § 3g; Tex. Gov't Code § 508.145(d).
- 8 *Moussazadeh*, 64 S.W.3d at 409.

- 9 The habeas judge also found that appellant would not have pleaded guilty absent the misinformation.
- 10 *Id.* at 413.
- 11 *See id.*
- 12 690 S.W.2d at 277.
- 13 *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex.Crim.App.2007). If it were necessary to decide whether *Hooper's* pronouncement regarding inference stacking constituted a new rule under *Teague*, I would hold that it does not, because, regardless of the scope of Texas's version of *Teague's* proscription against announcing new constitutional rules of criminal procedure on habeas, *see Danforth, supra*, such a proscription cannot apply to basic standards of habeas practice. Otherwise a court could never change its procedures or standards on habeas.
- 14 “Both failure to provide correct information and providing incorrect information violate that duty[.]” Court's opinion at 691.

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