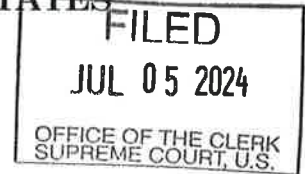


No.

24A16

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES



JAY SANDON COOPER

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
APPEALS FOR THE FIFTH DISTRICT OF TEXAS

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI

Jay Sandon Cooper
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Petitioner, Pro Se

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Petitioner, Jay Sandon Cooper, respectfully applies to this Court for an order extending the time in which to file his petition for writ of certiorari from July 16, 2024 until August 15, 2024, a period of thirty (30) days. This Court has jurisdiction under 28 U.S.C. §1257; and Supreme Court Rule 10(c): “[A] state court... has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” In support of this Application, Mr. Cooper states as follows:

1. This is a criminal case that was tried during the Covid Pandemic (State of Texas v. Jay Sandon Cooper; Case No. 006-86065-2019; County Court at Law No. 6, Colin County, Texas). Mr. Cooper appealed a jury verdict of guilty to the Respondent State Court of Appeals. The case was submitted for determination of fundamental error. The State Court of Appeals found no fundamental error. (opinion attached) On rehearing, Mr. Cooper pointed the Court's attention to multiple instances of fundamental error set forth in the first fourteen amendments to the United States Constitution, Mr. Cooper's motion for rehearing was denied. The Texas Court of Criminal Appeals denied Mr. Cooper's petition for discretionary review.

2. Mr. Cooper's case raises an important question: Whether the judicial duty to identify and protect constitutional rights described in *Obergefell v. Hodges* (a civil case) applies to State criminal cases? A relevant decision of this Supreme Court in a civil case states:

The fundamental liberties protected by [the Due Process] Clause include most of the rights enumerated in the Bill of Rights. [...]

The identification and protection of fundamental rights is an enduring part of the **judicial duty** to interpret the Constitution.

Obergefell v. Hodges, 576 U.S. 644, 663, 135 S. Ct. 2584, 2597–98, 192 L. Ed. 2D 609 (2015) (emphasis added). A Federal District Court also ruled that the requirements of the United States Constitution were not suspended during the Covid pandemic. *See Texas v. Dep't of Justice*, N.D. Tex., No. 5:23-cv-00034, order 2/27/24.

3. According to Supreme Court Rule 13.3, a petition for writ of certiorari is due on or before July 16, 2024. *See* Supreme Court Rule 13.3 (“the time to file the petition for a writ of certiorari . . . runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment”). However, the time granted by Supreme Court Rule 13 will be insufficient to allow Pro Se Petitioner to do justice to the issue at hand, which is of vast import to criminal defendants, nationally. Therefore, Petitioner seeks an extension of thirty (30) days in which to file his petition for a writ of certiorari. *See* Supreme Court Rule 13.5 (“[A] Justice may extend the time to file a petition for writ of certiorari for a period not exceeding 60 days”).

4. In accordance with Supreme Court Rule 13.5, this Application is submitted at least ten (10) days prior to the present due date. Further, the requested extension is

made in good faith and not for the purposes of delay. Indeed, the requested extension is made because of the vital importance associated with the issue at hand – judicial identification and protection of non-capital defendants against fundamental errors. On the outer bounds of this situation, this Court has repeatedly emphasized that “our duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.” *Burger v. Kemp*, 483 U.S. 776, 785 (1987).

5. Pro Se Petitioner believes that recent decisions, including in *Trump v. United States*, Case No. 23-939 (July 1, 2024) (immunity case) will inform Petitioner’s argument, particularly with regard to parody between the application of the Constitution in both the civil and criminal contexts (*Nixon cf. Trump*). Petitioner seeks an extension of thirty days to study and incorporate in his petition for writ of certiorari the recent decisions of this Supreme Court and to determine how the standards for fundamental error of the many states differ or not compared to the State of Texas.

Wherefore, in the interest of justice and for good cause shown, Mr. Cooper respectfully requests that this Court extend the current July 16, 2024 deadline until August 15, 2024.

Respectfully submitted,



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Affirmed and Opinion Filed October 5, 2023



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-01002-CR

JAY SANDON COOPER, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 6
Collin County, Texas
Trial Court Cause No. 006-86065-2019

MEMORANDUM OPINION

Before Justices Partida-Kipness, Reichel, and Breedlove
Opinion by Justice Partida-Kipness

Jay Sandon Cooper appeals from a judgment adjudicating him guilty of the misdemeanor offense of interference with the duties of a peace officer. Appellant, proceeding pro se, failed to file an appellant's brief. We affirm.

BACKGROUND

On June 3, 2019, a Collin County Deputy Constable attempted to serve appellant with a Writ of Possession. Appellant was arrested after he refused to come out of the residence and denied the peace officer entry into the residence. The State charged appellant by information with the misdemeanor offense of interference with

the duties of a peace officer. The case was tried to a jury in October 2021. The jury found appellant guilty as charged in the information and assessed punishment at ten days' confinement and a \$500.00 fine. The jury also recommended the sentence and fine be suspended. The trial court signed a judgment on October 29, 2021, and Appellant timely appealed.

Appellant proceeded pro se in this Court. The record in this appeal was complete on January 5, 2023, and appellant's brief was originally due Monday, February 6, 2023. *See* TEX. R. APP. P. 4.1(a). No brief was filed, and on February 8, 2023, this Court directed appellant to file his brief by February 21, 2023.¹ Over the next five months, appellant sought multiple extensions of time to file his brief and to supplement the record:

- On February 21, 2023, appellant filed his "Motion to Extend Time" to file the brief seeking "an extension of time to file his Brief."
- On March 8, 2023, we granted the motion for extension of time to file the brief and ordered appellant to file his brief by April 7, 2023.
- On April 7, 2023, appellant filed his "Motion for Order to Clerk; and Motion to Extend Time" seeking supplementation of the clerk's record and an extension of time to file appellant's brief.
- On May 4, 2023, this Court denied appellant's request for supplementation of the clerk's record but granted the request for extension of time to file brief, ordering appellant to file his brief by June 5, 2023. The May 4, 2023 order cautioned appellant: "In

¹ The Court ordered appellant to file his brief within ten days. The tenth day, February 18, 2023, was a Saturday, and Monday February 20, 2023, was a legal holiday, so appellant's brief was due February 21, 2023. *See* TEX. R. APP. P. 4.1(a).

view of the extensions granted, the Court is unlikely to grant any further extensions on appellant's brief."

- On May 8, 2023, appellant filed "Appellant's Request for Ruling on Previously Filed 'Motion for Order to Clerk; and Motion to Extend Time'; and Motion to Extend Time or Reset the Briefing Period."
- On May 10, 2023, this Court denied the May 8, 2023 motion in part, but we granted the request for extension of time to file the brief, and ordered appellant to file his brief on or before June 5, 2023. We again cautioned appellant: "In view of the extensions granted, the Court is unlikely to grant any further extensions on appellant's brief."
- Appellant filed an additional motion regarding the record on May 17, 2023, which this Court denied on May 26, 2023. Our May 26, 2023 order also ordered appellant to file his brief by June 5, 2023, and again cautioned appellant: "In view of the extensions granted, the Court is unlikely to grant any further extensions on appellant's brief."

Despite four extensions of time to file his brief, Appellant failed to file a brief by June 5, 2023. Instead, he filed a motion to abate the appeal and remand to the trial court for issuance of additional findings of fact and conclusions of law. In a June 6, 2023 Order, we denied the motion and ordered appellant to file his brief by June 16, 2023. We also noted "[a]ppellant has had over five months to prepare his brief since the record was complete, and the time is now four months past the original date the brief was due." We informed appellant if his brief was not filed by June 16, 2023, "the Court will submit this appeal on the record and without appellant's brief." See TEX. R. APP. P. 39.1(4).

Appellant failed to file a brief by June 16, 2023. We notified appellant on August 4, 2023, the case would be submitted without oral argument on October 3, 2023. On August 12, 2023, appellant filed a letter requesting an electronic copy of the appellate record. The Court sent him a copy of the appellate record on August 14, 2023.

We submitted the appeal without briefs on October 3, 2023. *See* TEX. R. APP. P. 38.8(b)(4). Appellant failed to file a brief prior to submission. Instead, on October 3, 2023, appellant filed an “emergency” motion to abate the submission date and a motion for extension of time to file his brief. We denied the motions.

FUNDAMENTAL ERROR

The failure of an appellant to file an appellant’s brief in a criminal case does not authorize the dismissal of a case. TEX. R. APP. P. 38.8(b)(1); *see also* TEX. CODE CRIM. PROC. art. 44.33(b) (stating appellant’s failure to file his brief in the time prescribed shall not authorize dismissal of appeal by court of appeals). Generally, when an appellant has not filed a brief in a criminal case, Rule 38.8(b) requires the appellate court to remand the case to the trial court to conduct a hearing and “determine whether the appellant desires to prosecute his appeal, whether the appellant is indigent, or, if not indigent, whether retained counsel has abandoned the appeal, and to make appropriate findings and recommendations.” TEX. R. APP. P. 38.8(b)(2); *see also* *Burton v. State*, 267 S.W.3d 101, 103 (Tex. App.—Corpus Christi—Edinburg 2008, no pet.). But when an appellant has chosen to represent

himself on appeal and has already been warned of the dangers of pro se representation, there is no need to remand for such a hearing. *Burton*, 267 S.W.3d at 103; *see also Lott v. State*, 874 S.W.2d 687, 688 n.2 (Tex. Crim. App. 1994).

Moreover, Rule 38.8(b)(4) states an “appellate court may consider [an] appeal without briefs, as justice may require.” TEX. R. APP. P. 38.8(b)(4); *see also Swartzkopf v. State*, Nos. 05-21-00662-CR, 05-21-00663-CR, 2022 WL 3714518, at *1 (Tex. App.—Dallas Aug. 29, 2022, no pet.) (mem. op., not designated for publication) (submitting case without briefs and reviewing record for fundamental error where pro se appellant failed to file brief). In doing so, we review the record for fundamental error. *Id.*; *Seay v. State*, Nos. 05-18-00362-CR to 05-18-00364-CR, 2019 WL 3886652, at *1–2 (Tex. App.—Dallas Aug. 19, 2019, no pet.) (mem. op., not designated for publication); *Cooper v. State*, No. 05-14-00089-CR, 2015 WL 150081, at *1 (Tex. App.—Dallas Jan. 8, 2015, pet. ref’d) (mem. op., not designated for publication); *Washington v. State*, No. 01-13-01038-CR, 2015 WL 7300511, at *2 (Tex. App.—Houston [1st Dist.] Nov. 19, 2015, no pet.) (mem. op., not designated for publication) (“When an appellant fails to file a brief, we may submit the case without briefs and review the entire record, in the interest of justice, to determine if the record reveals fundamental error.”).

Fundamental errors include: (1) denial of the right to counsel; (2) denial of the right to a jury trial; (3) denial of ten days’ preparation before trial for appointed counsel; (4) absence of jurisdiction over the defendant; (5) absence of subject-matter

jurisdiction; (6) prosecution under a penal statute that does not comply with the Separation of Powers Section of the state constitution; (7) jury charge errors resulting in egregious harm; (8) holding trials at a location other than the county seat; (9) prosecution under an ex post facto law; and (10) comments by a trial judge which taint the presumption of innocence. *See Saldano v. State*, 70 S.W.3d 873, 888–89 (Tex. Crim. App. 2002); *Burton*, 267 S.W.3d at 103.

In the interest of justice, we have reviewed the entire record for fundamental error and have found none. *See Burton*, 267 S.W.3d at 103; *see also Schwartzkopf*, 2022 WL 3714518, at *1. We, therefore, affirm the trial court’s judgment.

CONCLUSION

Without a brief, no issues are before us. Finding no fundamental error, we affirm the trial court’s judgment.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JAY SANDON COOPER, Appellant

No. 05-21-01002-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at
Law No. 6, Collin County, Texas
Trial Court Cause No. 006-86065-
2019.

Opinion delivered by Justice Partida-
Kipness. Justices Reichel and
Breedlove participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered this 5th day of October 2023.

Order entered November 1, 2023



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-21-01002-CR

JAY SANDON COOPER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Court at Law No. 6
Collin County, Texas
Trial Court Cause No. 006-86065-2019**

ORDER

Before Justices Partida-Kipness, Reichel, and Breedlove

Before the Court is appellant Jay Sandon Cooper's motion for rehearing. We

DENY the motion.

/s/ **ROBBIE PARTIDA-KIPNESS
JUSTICE**

2/21/2024

COOPER, JAY SANDON Tr. Ct. No. **006-86065-2019**

COA No. **05-21-01002-CR**

PD-0832-23

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

DISTRICT CLERK COLLIN COUNTY
2100 BLOOMDALE ROAD STE 12132
MCKINNEY, TX 75071

* DELIVERED VIA E-MAIL *

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

4/17/2024

COOPER, JAY SANDON Tr. Ct. No. 006-86065-2019

05-21-01002-CR

PD-0832-23

On this day, the Appellant's Pro Se motion for rehearing has been denied.

Deana Williamson, Clerk

DISTRICT CLERK COLLIN COUNTY
2100 BLOOMDALE ROAD STE 12132
MCKINNEY, TX 75071

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4/17/2024

COOPER, JAY SANDON Tr. Ct. No. 006-86065-2019

On this day, the Appellant's Pro Se motion for rehearing has been denied.

**05-21-01002-CR
PD-0832-23**

Jeana Williamson, Clerk

5TH COURT OF APPEALS CLERK
600 COMMERCE, 2ND FLOOR
DALLAS, TX 75202
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4/17/2024

COOPER, JAY SANDON Tr. Ct. No. 006-86065-2019

05-21-01002-CR

PD-0832-23

On this day, the Appellant's Pro Se motion for rehearing has been denied.

Leah Williamson, Clerk

STATE PROSECUTING ATTORNEY

STACEY SOULE

PO BOX 13046

AUSTIN, TX 78711

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4/17/2024

COOPER, JAY SANDON Tr. Ct. No. 006-86065-2019 05-21-01002-CR
PD-0832-23

On this day, the Appellant's Pro Se motion for rehearing has been denied.

Debra Williamson, Clerk

DISTRICT ATTORNEY COLLIN COUNTY
2100 BLOOMDALE ROAD, SUITE 100
MCKINNEY, TX 75071
* DELIVERED VIA E-MAIL *

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4/17/2024

COOPER, JAY SANDON Tr. Ct. No. 006-86065-2019

05-21-01002-CR

PD-0832-23

On this day, the Appellant's Pro Se motion for rehearing has been denied.

Deana Williamson, Clerk

JAY SANDON COOPER
4823 BLUE WATER CIRCLE
GRANBURY, TX 76049
* DELIVERED VIA E-MAIL *

Clerk, Supreme Court of the United States,
Washington, D. C. 20543

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAY SANDON COOPER

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH
DISTRICT OF TEXAS

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI**

CERTIFICATE OF SERVICE

This is to certify that, pursuant to Rule 29.2, the forgoing and attached document (Extend Time to Petition) was deposited in the mail, first class postage prepaid, and served upon State's Attorney attorney, Greg Willis, and on the State Prosecuting Attorney, Stacey Soule.

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on July 16, 2024.



Jay Sandon Cooper".