[25] In theory, all criminal convictions are subject to direct appeal, state habeas corpus and federal habeas corpus review. However, because indigent prisoners have no right to court-appointed counsel in non-capital state and federal habeas proceedings, the vast majority of state inmates not on death row do not seek state or federal habeas relief.

[26] *Ex parte* Cruzata, 220 S.W.3d 518, 520 (Tex. Crim. App. 2007).

[27] *Ex parte* Graves, 70 S.W.3d 103, 109 (Tex. Crim. App. 2002) ("[B]oth federal and Texas courts have confined the scope of post-conviction writs of habeas corpus to jurisdictional or fundamental defects and constitutional claims. Violations of statutes, rules, or other non-constitutional doctrines are not recognized. Thus, for example, a trial court's failure to adhere to statutory procedures serving to protect a constitutional provision violates the statute, not the constitutional provision itself.") (internal citations omitted); *see also Ex parte* Douthit, 232 S.W.3d 69, 75 (Tex. Crim. App. 2007) (violations of Articles 1.13 and 1.14 of the Tex. Code of Criminal Procedure, which prohibited capital murder defendants indicted before Sept. 1, 1991 from waiving a jury trial, are statutory violations and not cognizable in state habeas proceedings).

[28] *Ex parte* Kirby, 492 S.W.2d 579, 581 (Tex. Crim. App. 1973).

[29] *Ex parte* Gardner, 959 S.W.2d 189, 199 (Tex. Crim. App. 1998) (op. on reh'g) ("There is no valid reason why applicant could not have raised on direct appeal the [Fifth Amendment] claim he asserts in this proceeding. It is well-settled "that the writ of habeas corpus should not be used to litigate matters which should have been raised on direct appeal.")

[30] *Ex parte* Easter, 615 S.W.2d 719, 721 (Tex. Crim. App. 1981) (attack on sufficiency of the evidence at trial may not be raised in habeas proceedings).

[31] 28 U.S. § 2244 (d) (West 2013).

[32] 28 U.S.C. §§ 2254 (b) & (c) (West 2013); *see also* Cullen v. Pinholster, 563 U.S. 170 (2011).

[33] *See* 28 U.S.C. §§ 2244, 2254 (2013); *see also* Cullen v. Pinholster, 563 U.S. 170 (2011).

[34] Padilla v. Kentucky, 559 U.S. 356, 371 (2010) ("Surmounting Strickland's high bar is never an easy task."); *see also Ex parte* Garcia, 2016 WL 1358947 (Tex. Crim. App. Apr. 6, 2016) (J. Alcala dissenting) (discussing the demands of establishing an ineffective assistance of counsel claim).

[35] Under the U.S. Supreme Court's holding in Strickland v. Washington, 466 U.S. 668 (1984), a defendant must demonstrate (1) that the attorney's representation fell below an objective standard of reasonableness—overcoming a strong presumption that the conduct was reasonable—and (2) that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different

[36] H.B. 200, 63rd Leg., Reg. Sess. (Tex. 1973), ch. 426, art. 3, §1 (eff. June 14, 1973) (amending the Texas Code of Criminal Procedure by adding Article 37.071, Procedure in Capital Case, which provided *inter alia* "(f) the judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals[.] . . . Such review . . . shall have priority over all other cases."). At the time of this enactment, the Court of Criminal Appeals had jurisdiction over all criminal appeals. However, it did not preside over a death penalty case unless the defense filed an appeal. TEX. CODE CRIM. PROC. ANN. art. 44.08 (Vernon 1966) (setting forth deadlines for filing a notice of appeal in all criminal cases including cases in which the defendant has been sentenced to death), *repealed by* S.B. 854, 69th Leg., Reg. Sess. (Tex.1985) ch. 685, § 4 (eff. Sept. 1, 1985).

[37] 408 U.S. 238 (1972) (per curiam).

[38] The U.S. Supreme Court granted *certiorari* for three cases that were decided in *Furman*. Two cases were from Georgia, Furman v. State, 167 S.E.2d 628 (Ga. 1969) and Jackson v. State, 171 S.E.2d 501 (Ga. 1969). The third case was from Texas, *Branch v. State,* 447 S.W.2d 932 (Tex. Crim. App. 1969).

[39] 408 U.S. at 238.

[40] *Id*. at 310 (Stewart, J. concurring).

[41] *See* Debate on Tex. H.B. 64 on the Floor of the Senate, 63rd Leg., Reg. Sess. (May 23, 1973) (Statements of Sens. Ogg, Adams, and Meier regarding the *Furman* decision and debate over whether H.B. 64 or H.B. 200 contained the best response to this ruling) (transcript available from the Texas Legislative Resource Library).

[42] *See* Jurek v. Texas, 428 U.S. 262, 276 (1976) ("By providing prompt judicial review of the jury's decision in a court with statewide jurisdiction, Texas has provided a means to promote the evenhanded, rational, and consistent imposition of death sentences under law."); *see also* McGinn v. State, 961 S.W.2d 161, 175 (Tex. Crim. App. 1998) ("Meaningful appellate review plays the crucial role of ensuring that the death penalty is not imposed arbitrarily or irrationally.").

[43] Tex. R. App. P. 34.1, 34.5 & 34.6.

[44] *Id*. at 38.6 (a) ("an appellate must file a brief within 30 days . . . after the later of (1) the date the clerk's record was filed; or (2) the date the reporter's record was filed").

[45] *See* Tex. R. App. P. 38.1 & 44.

[46] *Id*. at 38.6(b).

[47] *Id*. at 38.6(c).

[48] Jackson v. Virginia, 431 U.S. 307, 319 (1979); *see also* McCain v. State, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000) (en banc); and Brooks v. State, 323 S.W.3d 893 (Tex. Crim. App. 2010).

[49] Charles F. Baird, *Standards of Appellate Review in Criminal Cases*, 42 S. TEX. L. REV. 707, 723 (2001) (explaining that "five fundamental errors exist: (1) total deprivation of counsel; (2) a biased judge or jury; (3) the unlawful exclusion of the venire members from the jury on the basis or race or gender; (4) denial of the right to self-representation; and (5) the denial of the right to a public trial.") [hereinafter Baird, *Standards of Appellate Review*]; *see also Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991) (explaining that automatic reversible error applies to "constitutional deprivations . . . affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself . . . [such that] a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair").

[50] Baird, *Standards of Appellate Review*, *supra* note 49 at 724.

[51] *Id.* (citing Jones v. State, 944 S.W.2d 642, 651 (Tex. Crim. App. 1996)).