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December 13, 1996

Hon. Troy Bennett, Clerk
Court of Criminal Appeals
Post Office Box 12308
Austin, Texas 78711

RECEIVED IN
COURT OF CRIMINAL APPEALS

DEC 16 1996

Re: Ex parte Robert Moreno Ramos; No. 71,714

Dear Mr. Bennett:

Troy C. Bennett, Jr., Clerk

I am receipt of the Court's Order in the above styled and numbered cause, denying the request of attorney Joseph A. Connors III, to be appointed as Mr. Ramos' *habeas* counsel under Article 11.071, V.A.C.C.P. As one of Mr. Ramos' attorneys on direct appeal, I feel compelled to seek reconsideration of the Court's Order, on behalf of Mr. Ramos. Please accept this letter brief as a motion for reconsideration of the Court's ruling.

The relevant facts in this case appear to be as follows:

1. Mr. Ramos is indigent.
2. Mr. Connors has been representing Mr. Ramos pursuant to a court-appointment.
3. As a result of the court appointment, Mr. Ramos and Mr. Connors developed an attorney-client relationship.
4. Mr. Ramos is entitled to court-appointed counsel under Art. 11.071, V.A.C.C.P.
5. As evidenced by his motion, his statements on open court on October 18, 1996, and the trial court's findings, entered of record the same day (see Exhibit "A"), Mr. Connors wishes to remain on as Mr. Ramos' attorney, and continues, in fact, to represent Mr. Ramos in this case. Presently, application for writ of certiorari is pending at the United States Supreme Court.
6. As evidence by his statements on open court on October 18, 1996, and the trial court's findings, entered of record the same day (see Exhibit "A"), Mr. Ramos wants Mr. Connors to remain on as his court-appointed attorney and prosecute his writ application under Article 11.071, V.A.C.C.P.

In Buntion v. Harmon, 827 S.W.2d 945 (Tex. Cr. App. 1992) and Stotts v. Wisser, 894 S.W.2d 366 (Tex. Cr. App. 1995), trial courts attempted to prevent court-appointed trial counsel from remaining on as court-appointed counsel on

appeal. In each case, this Court held that trial courts were powerless to prevent court-appointed counsel from remaining on as the defendant's court-appointed counsel on appeal over the objection of both counsel and the defendant when the only justification for such replacement is the trial judge's personal practice, experience, feelings or preference. Rather, there must be some principled reason, apparent from the record, to justify the trial judge's sua sponte replacement of appointed counsel. *Buntion, supra*, at 949.

In those two cases, the defendant had developed an attorney-client relationship with his court-appointed attorney and was entitled to court-appointed counsel in further proceedings. Each defendant wanted his court-appointed attorney to remain on as his attorney and represent him on appeal. Each trial court removed counsel without principled reasons. This Court Ordered each trial court to vacate the Order removing court-appointed trial counsel.

There appears to be no difference in the circumstances of this case and *Buntion* or *Stotts*, save and except the language in Article 11:071 § 2(e), which appears to presume that direct appeal and *habeas* counsel will be different, which statute is discretionary in the instant case. In this case, Mr. Ramos is entitled to court-appointed counsel in further proceedings, and wants his present court-appointed attorney to remain on as his attorney.

The undersigned respectfully suggests that as both Mr. Ramos and Mr. Connors have requested Mr. Connors' appointment on the record, the Court *could* appoint Mr. Connors. See Art. 11:071 § 2(e)(1), V.A.C.C.P. Given this Court's acknowledged shortage of (a) attorneys available for representation of indigent death row inmates, and (b) money to pay such attorneys, appointing Mr. Connors makes the most sense.

Mr. Connors is the attorney most familiar with Mr. Ramos' case. By appointing Mr. Connors, the Court will not have to pay another attorney to become familiar with the client and/or the facts of this case. Based on the \$100 per hour fee the Court has announced, it will cost the Court in excess of Six Thousand Dollars (\$6,000) simply to have another attorney read with the eighty-eight (88) volume statement of facts in this case.

The ends of justice will be best served by reconsidering and granting Mr. Connors' request to act as Mr. Ramos's Art. 11:071 *habeas* lawyer. I hereby pray for such relief on behalf of Mr. Ramos.

I certify that a true and correct copy of the above and foregoing letter brief / motion for reconsideration have been this day transmitted, via telecopier (~~fax~~), to the office of the Hidalgo County District Attorney's office.

Respectfully submitted,



David A. Schulman
State Bar No. 17833400