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August 31, 2001

VIA FACSIMILE: 1-504-589-4123

The Honorable Judge of the
U.S. Court of Appeals Fifth Circuit
Attn: Monica Washington
600 Camp Street
New Orleans, LA 70130

U.S. COURT OF APPEALS

FILED

SEP 12 2001

CHARLES R. FULBRUGE III
CLERK



Re: 00-40633; U.S.D.C. No. 8:99-CV-134

Pursuant to this Court's oral order from the bench on August 7, 2001, Appellant hereby files this letter brief which briefs the issues raised in the sealed documents which were previously submitted to the court and which had heretofore been concealed by the Texas Court of Criminal Appeals. Contained in the sealed documents are the following documents which are essential and attached hereto as Exhibits "A" through "H." The documents were mailed to this Court on August 9, 2001 and thus, this brief is due 15 days from that date, i.e., August 31, 2001.

- Exhibit "A" "HEARING ON REQUEST FOR ATTORNEY-INDIGENCY" by Joseph A. Connors III, dated October 18, 1996.¹
- Exhibit "B" "TRAIL COURT'S FINDINGS BASED ON TEX. CODE CRIM. PROC. ANN. Art. 11.071 (Supp. 1996)", October 18, 1996, finding that Mr. Ramos specifically requested, on the record, that Joseph A. Connors III be appointed.
- Exhibit "C" "ORDER APPOINTING COUNSEL UNDER ARTICLE 11.071, SEC. 2, V.A.C.C.P." by Texas Court of Criminal Appeals appointing Kyle B. Welch.
- Exhibit "D" "RAMOS' REQUEST FOR APPOINTMENT OF JOSEPH A. CONNORS III AS ONE OF RAMOS' ATTORNEYS UNDER ARTICLE 11.071, V.A.C.C.P."

¹While Mr. Connors states on the record that he is present in court as a "volunteer," Mr. Ramos believes that Mr. Connors' statement that he was not "appointed" was incorrect given Mr. Connors' status as court-appointed appeals counsel.

Exhibit "E" Order denying Ramos' request for appointment of Joseph A. Connors III, dated December 6, 1996.

Exhibit "F" Motion to reconsider denial of appointment of Joseph A. Connors III, dated December 16, 1996.

Exhibit "G" Order denying motion to reconsider, dated December 17, 1996.

Exhibit "H" Letter to Kyle Welch from Troy Bennett, Jr., dated September 19, 1997.

The constitutional guarantee of counsel in the Sixth Amendment includes four rights:

1. Right to counsel;
2. Right to effective assistance of counsel;
3. Right to preparation sufficient to ensure a minimal level of quality of counsel; and
4. Right to be represented by counsel of one's own choice.

U.S. v. McCutcheon, 86 F.3d 187 (11th Cir. 1996). Mr. Ramos recognizes that the right to choose a particular attorney must be weighed against the administration of justice concerns and cannot be insisted upon in a manner that will obstruct reasonable and orderly court procedures. *U.S. v. Neal*, 36 F.3d 1190 (1st Cir. 1994), *rehearing denied*, 105 F.3d 1. However, when the Sixth Amendment right to counsel (who is arbitrarily removed after being steeped in the case) is balanced against the concerns of the administration of justice, it is clear that the right to continue with the informed counsel outweighs any other concerns. In this case, it is clear that Mr. Ramos wanted Mr. Connors to retain his appointment (Exhibit "A," P. 4, Ln. 22-P. 5, Ln. 1) and that the trial court agreed that Mr. Connors should retain the appointment (Exhibit "A," P. 5, Ln. 2-7. See also Exhibit "B," "D," and "F.")

The Sixth Amendment of the U.S. Constitution prohibits the arbitrary dismissal of an attorney chosen by a defendant, *Davis v. Stampler*, 650 F.2d 477 (3rd Cir. 1981). While it is true that

indigent defendants have no absolute right to counsel of their choice, *see U.S. ex. rel. v. Washington*, 916 F.Supp. 1411, *reversed in part* 106 F.3d 742, the attorney-client relationship cannot be terminated on the whims of the court when there are no extenuating circumstances and counsel has not committed requiring remand. *See U.S. v. Koblitz*, 803 F.2d 1523 (11th Cir. 1986).

In *Koblitz*, the trial court ordered the defendants' attorneys, who were unable to proceed to trial in a criminal case due to scheduling conflicts created by another criminal case, to obtain substitute counsel for clients. The court held that this unlawfully interfered with the attorney-client relationship.

In the instant case, the resolution of the right-to-counsel issue hinges upon whether or not the state court could arbitrarily refuse to continue the appointment of Mr. Joseph Connors after the attorney-client relationship had been established. Texas law is clear on the subject that counsel may not be relieved of their duties or their continued representation refused after an attorney-client relationship exists. *See Sterns v. Clinton*, 780 S.W.2d 216, 225 (Tex. Crim. App. 1989). In *Sterns*, the court held that once a valid attorney-client relationship had been established "the trial court cannot arbitrarily [counsel] as attorney of record over the objection of the defendant and counsel." *See also Buntion v. Harmon*, 827 S.W.2d 945, 949 (Tex. Crim. App. 1992) (holding that there must be some "principled reason" before appointed counsel may be removed over the objection of both the objecting counsel and defendant).

Perhaps more importantly, the U.S. Supreme Court has recognized these very same principles in the civil context in a series of cases involving trade unions in which attorneys, chosen by trade unions and the NAACP, were engaged in public-interest litigation. The Virginia Bar attempted to intervene with the attorney-client relationship by sanctioning the panel attorneys.

In a series of cases holding unconstitutional the imposition of bar sanctions against civil rights and trade union attorneys for soliciting clients, the United States Supreme Court recognized a "basic right to group legal action[,]" and asserted that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 585 (1971); *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415, 428-429 (1963). In *Trainmen*, the Court explained that:

A State could not, by invoking the power to regulate the professional conduct of attorneys infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, *cf. Gideon v. Wainwright*, 372 U.S. 335, and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics. The State can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts to vindicate their legal rights. The right to petition the courts cannot be so handicapped.

377 U.S. at 7.

In the instant case, Mr. Connors was one of the select few attorneys in the Valley capable of handling a capital habeas case. In the cases cited above, the attorneys were selected by the referral service on the basis of recommendations by local and federal judges, as well as local lawyers. As a result, legal employment was being channeled to the particular lawyers approved by the union as "legally and morally competent to handle injury claims for members and their families." *Id.* at 5. The Virginia Bar obtained an injunction and sanctions against the referring attorneys, both of which the Supreme Court held to be unconstitutional. *Id.* See also *United Mine Workers v. Illinois State Bar*

Association, 389 U.S. 217 (1967) (holding injunction prohibiting union from employing licensed attorney to prosecute workers' compensation claims to be unconstitutional).

In this case, it is clear that Mr. Connors was Mr. Ramos's counsel on appeal. Pursuant to Tex. Crim. Pro. Art. 11071, Mr. Connors and Mr. Ramos followed each and every step laid out by Texas state law for Mr. Connors to continue representation of Mr. Ramos through the state habeas proceeding. As a result, Mr. Ramos's Sixth Amendment right to counsel was violated when the Texas Court of Criminal Appeals arbitrarily dismissed Mr. Connors and replaced him with Mr. Kyle Welch as state habeas counsel without giving a "principled reason."

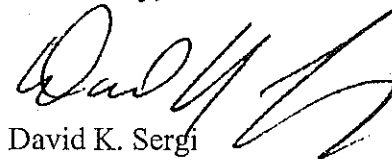
It is clear, where as here, when the court refuses to continue an appointment of a knowledgeable and reputable attorney such as Mr. Connors, and after the state district court makes appropriate findings that enable the appointment to continue,² that Mr. Connors could not be removed without violating Mr. Ramos's Sixth Amendment right of counsel. There simply was no valid reason for not continuing the appointment.

In this case, Ramos believes that this case must be remanded for an evidentiary hearing to determine what Mr. Connors would have done differently. The gravamen of the complaint is that Mr. Connors has a deep and abiding understanding of the case. Mr. Connors has indicated to co-counsel, Mr. Larry Warner that he would have done many things differently and raised issues not raised by Mr. Welch. Mr. Connors was, of course, intimately familiar with Mr. Ramos's case as demonstrated by the fact that he drafted a very lengthy and detailed appellate brief.

²In fact, the District Court expected that Mr. Connors would continue his appointment. See Exhibit "A," P. 5, Ln. 2-7.

As a result, any effort to keep principled and experienced attorneys from representing Mr. Ramos as he travels from state appellate court to state habeas court simply has no rational basis in fact or law and, therefore, Mr. Ramos's Sixth Amendment rights have been violated. Therefore, in light of the constitutional violations that have occurred, Mr. Ramos must be given the opportunity to start anew in state court, or alternatively, this Court appoint Mr. Connors to now raise state habeas issues which are otherwise barred in this federal habeas matter.

Yours truly,



David K. Sergi

DKS/vl

cc: VIA FAX 1-512-463-2142
Kelly Weaver

VIA FAX 1-956-544-5234
Larry Warner

VIA FAX 1-956-687-8230
Joseph Connors III

VIA U.S. MAIL:
client

71714

CAUSE NO. CR-1430-92-B

THE STATE OF TEXAS) (IN THE 93RD DISTRICT COURT
VS.) (OF
ROBERT MORENO RAMOS) (HIDALGO COUNTY, TEXAS

HEARING ON REQUEST FOR ATTORNEY - INDIGENCY

OCTOBER 18, 1996

A P P E A R A N C E S :

FOR THE STATE: HON. THEODORE C. HAKE
ASSISTANT DISTRICT ATTORNEY
HIDALGO COUNTY COURTHOUSE
100 S. CLOSNER
EDINBURG, TEXAS 78539

FOR THE DEFENDANT: HON. JOSEPH A. CONNORS, III
ATTORNEY AT LAW
804 PECAN
MCALLEN, TEXAS 78501

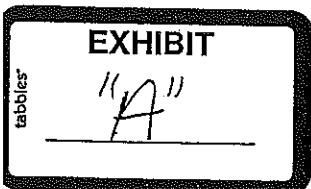
BE IT REMEMBERED that on the 18th day of
October, 1996 the above entitled and numbered cause came
on for hearing before the Honorable Fernando G. Mancias,
Presiding Judge of the 93rd District Court and the
following proceedings were had, to-wit:

RECEIVED IN
COURT OF CRIMINAL APPEALS

OCT 31 1996

ORIGINAL

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313



Troy C. Benton, Clerk

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P R O C E E D I N G S

THE COURT: Let me call CR-1430-92-B, State of Texas vs. Robert Moreno Ramos.

MR. HAKE: The State is present and ready for this hearing on appointment of counsel, Your Honor.

MR. CONNORS: For the record, Mr. Ramos is here. While I'm not appointed to be here today, as a volunteer, I guess I'm here to help the system and the Court for Mr. Ramos.

THE COURT: Okay.

MR. CONNORS: Joe Connors for Mr. Ramos.

THE COURT: Mr. Ramos, how are you doing, sir?

THE DEFENDANT: All right, I guess.

THE COURT: I need to appoint somebody for you, Mr. Ramos, based on some Statutes on capital murder defendants, do you understand that, sir?

THE DEFENDANT: Yeah, I need somebody to be appointed.

THE COURT: All right.

MR. HAKE: Judge, basically, the Statute provides that the Court of Criminal Appeals makes the actual appointment. You're simply required to determine if he's indigent, if he wishes counsel appointed. You ask him on the record whether he

1 wants any of his prior attorneys to be considered for
2 appointment, because the Statute provides that it can
3 only be one of those individuals, if he so requests,
4 and they agree.

5 THE COURT: Okay. Well, let me ask you, Mr.
6 Ramos. Do you have any funds to hire somebody to
7 represent you on the appeal of this case?

8 THE DEFENDANT: Well, I was hoping to -- well, I
9 don't have no funds right now.

10 THE COURT: Okay.

11 THE DEFENDANT: Nor do I think I'm going to come
12 on any funds soon.

13 THE COURT: You're still indigent, is that
14 right?

15 THE DEFENDANT: I'm still indigent, yes.

16 THE COURT: And do you want somebody to
17 represent you on the appeal of this capital sentence?

18 THE DEFENDANT: Yes, I need somebody to
19 represent me.

20 MR. CONNORS: If I might help both the Court and
21 my client.

22 THE DEFENDANT: I was --

23 MR. CONNORS: You're using the word, "appeal,"
24 and the official wording right now is Writ of Habeas
25 Corpus. I realize we're doing the same process, but

1 it's a different way, so maybe you could change your
2 language and we would have a straight record.

3 THE COURT: Okay. Mr. Ramos, to proceed with
4 the Writ of Habeas Corpus in this case, do you want
5 somebody to represent you, sir?

6 THE DEFENDANT: Yes, I would like to have
7 somebody to represent me.

8 THE COURT: And you were represented at trial by
9 Mr. Joseph Connors and Ricardo Flores, is that
10 correct? Jack --

11 THE DEFENDANT: That's correct.

12 MR. CONNORS: That was the Cuellar case. This
13 was Hunter, Jack Hunter.

14 THE COURT: Jack Hunter and Ricardo Flores, is
15 that correct?

16 THE DEFENDANT: Yes, my first initial attorneys,
17 yes.

18 THE COURT: Yes, at the trial of this case?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. And you're asking that Mr.
21 Connors be appointed to represent you?

22 THE DEFENDANT: I was hoping that Mr. Connors
23 would continue handling my case, having gained a
24 little bit of trust on the way he was doing things
25 for me. I'm hoping that the Court sees fit that Mr.

1 Connors gets appointed to represent me.

2 THE COURT: Well, I can't do the appointment,
3 but I'm sure the Court of Criminal Appeals will
4 appoint him in this case. All right.

5 THE DEFENDANT: All I can do is ask.

6 THE COURT: All right. Anything else?

7 MR. HAKE: No, Your Honor. We have prepared a
8 proposed order for today's hearing. Both Mr. Connors
9 and I have reviewed that order, and present it to the
10 Court for signature.

11 Judge, the only other thing you need to do, I
12 believe, is briefly ask Mr. Connors if he agrees to
13 apply for purposes of Writ of Habeas Corpus because
14 the Statute says that he has to agree, also, to be
15 considered for appointment.

16 THE COURT: Any problem with that?

17 MR. CONNORS: Judge, none. And if the Court of
18 Criminal Appeals sees fit to appoint me, I'll be glad
19 to stay on and help Mr. Ramos.

20 THE COURT: You're on the list for the capital
21 murder appointments, aren't you?

22 MR. CONNORS: In our area, yes, Your Honor, in
23 our County. And, Mr. Ramos, he's seen the proposed
24 order and he has no problem with it. I've told him
25 this morning that I'm going to finish up his work on

1 the Petition for Certiorari and right now, soon, take
2 the case to Washington, D.C. for the Supreme Court.

3 THE COURT: Okay. And you'll agree to accept
4 the appointment, if appointed?

5 MR. CONNORS: If Judge McCormick or the Court of
6 Criminal Appeals appoints me, yes, Your Honor.

7 THE COURT: Okay. Let me sign the Trial Court's
8 findings, based upon Tex. Code of Crim. Proc., Art.
9 11.071. All right.

10 MR. HAKE: Judge, the only other thing we need
11 to do is that he was bench warranted down for
12 strictly purposes of this brief hearing. There's no
13 need to retain him in local custody, so we ask the
14 Court to sign a commitment to send him back to death
15 row in Huntsville.

16 THE COURT: I will.

17 MR. CONNORS: Judge, before we close today, my
18 client wants to call to your attention that he was
19 bench warranted in, he arrived yesterday, and he was
20 in B-2 for awhile, which is the regular cell system,
21 but at 2:00 this morning, he was awakened and moved
22 to a holding cell where there was no running water
23 and it was not very good living facilities, since
24 2:00 this morning, so --

25 THE COURT: It's a bad facility out there.

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MR. CONNORS: He's commenting it was pretty bad, so he would like, if he's going to be staying in our jail very long, and maybe your release -- or your commitment order says get him out of here quickly, but he would like to be in normal living quarters.

THE COURT: If it's possible, I guess it's all right.

MR. CONNORS: If the Sheriff will do that.

THE COURT: But they're trying to take him back today.

MR. CONNORS: Okay. Can I get the order and I'll process it. We're finished this morning, Your Honor?

THE COURT: Yes, thank you.

MR. HAKE: Judge, may I be excused, I have another hearing scheduled at 10:00 o'clock.

THE COURT: Yes.

END OF PROCEEDING

THE STATE OF TEXAS)

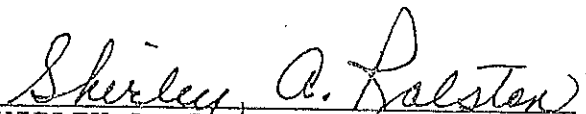
COUNTY OF HIDALGO)

I, SHIRLEY A. RALSTON, official court reporter in and for the 93rd District Court, Hidalgo County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all the proceedings directed by counsel to be included in the statement of facts, in the above entitled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the cost of this statement of facts is \$ 30⁰⁰ and is due and owing by the County of Hidalgo, State of Texas.

WITNESS my hand this the 21st day of October, 1996.


SHIRLEY A. RALSTON, C.S.R.
Official Court Reporter
93rd District Court
Certification No. 2089
Certificate Expires: 12/31/96
Phone (210) 318-2255

CAUSE NO. CR-1430-92-B

THE STATE OF TEXAS	§	IN THE 93RD DISTRICT COURT
VS.	§	OF
ROBERT MORENO RAMOS	§	HIDALGO COUNTY, TEXAS

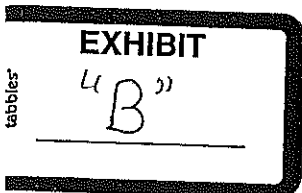
TRIAL COURT'S FINDINGS BASED ON TEX. CODE
CRIM. PROC. ANN. Art. 11.071 (Supp. 1996)

On this, the 18th day of October, 1996, this Court held a hearing in the above-referenced case pursuant to TEX. CODE CRIM. PROC. Art. 11.071 (Supp. 1996). Defendant ROBERT MORENO RAMOS appeared in his own proper person. The STATE was represented by Assistant Criminal District Attorney THEODORE C. HAKE. JOSEPH A. CONNORS, III, who had been one of Defendant Garcia's attorneys on direct appeal of this case, also appeared at said hearing.

At the outset of the hearing this Court determined that this is a capital murder case in which Defendant Robert Moreno Ramos had been sentenced to death after the jury had given affirmative responses to the death penalty special issues.

This Court also noted that automatic appeal of this sentence to the Texas Court of Criminal Appeals led to affirmance of the conviction and sentence on June 26, 1996. See Ramos v. State, ___ S.W.2d ___ (Tex.Crim.App., No. 71,714, June 26, 1996).

This court further found that the Court of Criminal Appeals had denied a motion for rehearing in this case on September 11, 1996.



Pursuant to TEX. CODE CRIM. PROC. Art. 11.071, Sec. 2 (c) (Supp. 1996), this Court then determined that Defendant Ramos had been represented at trial by Ricardo Flores, whose address is 106 South 12th Street, Edinburg, Texas 78539 and whose telephone number is (210) 381-0514, and Jack D. Hunter, whose address is 706 North 1st Street, Harlingen, Texas 78550 and whose telephone number is (210) 423-4672. This Court also determined that Joseph A. Connors, III, whose address is 212 Nolana or P.O. Box 5838, McAllen, Texas 78502-5838 and whose telephone number is (210) 687-8217; Dorina Ramos, whose address is P.O. Box 720879, McAllen, Texas 78504 and whose telephone number is 682-1918; Mark Alexander, whose address is 804 Pecan or P.O. Box 4136, McAllen, Texas 78502-4136 and whose telephone number is (210) 682-0228; and David A. Schulman, whose address is Schulman & Krug, 607 West 9th Street, Austin, Texas 78701 and whose telephone number is (512) 474-4747, had been Defendant Ramos' attorneys on direct appeal of this case.

This Court further noted that TEX. CODE CRIM. PROC. Art. 11.071, Sec. 2 (E) (Supp. 1996) provides that the Court of Criminal Appeals may not appoint any of these individuals to represent Defendant Ramos unless both Ramos and the attorney request the appointment on the record or said Court finds good cause to make the appointment.

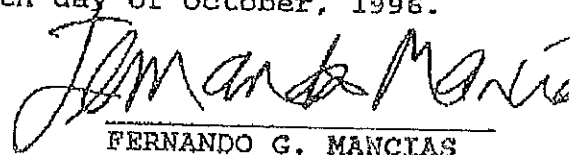
However, Defendant ROBERT MORENO RAMOS specifically requested, on the record, that JOSEPH A. CONNORS, III be appointed as one of his attorneys for purposes of this habeas corpus proceeding. Mr. Connors also requested to be appointed for this purpose on the record.

Having made all the necessary findings called for by TEX. CODE CRIM. PROC. Art. 11.071 (Supp. 1996), this Court directs Ruben del Bosque, Appeals Clerk for the Hidalgo County District Clerk's Office, to immediately prepare and transmit to the Court of Criminal Appeals: (1) a certified copy of the judgment in this case; (2) a certified copy of these findings; (3) the original transcription of the court reporter's notes of the hearing on this matter; (4) a certified copy of Defendant's Application for Appointment of Counsel; (5) a certified copy of Defendant's Application for a Bench Warrant, and its accompanying proposed order; and (6) a certified copy of the bench warrant issued by this Court on October 14, 1996.

This Court still further directs the court reporter who reported this hearing to prepare a transcription of her notes of this hearing and to deliver an original and a copy thereof to Mr. del Bosque.

This Court also directs Mr. del Bosque to file the copy of the transcription of the court reporter's notes as part of the trial court record of this case.

SIGNED AND ENTERED on this, the 18th day of October, 1996.



FERNANDO G. MANCIAS
Judge Presiding
93rd District Court
Hidalgo County, Texas

OCT 18 1996
PAULINE G. GONZALEZ
DISTRICT CLERK HIDALGO COUNTY TEXAS
DEPUTY

ROBERT MORENO RAMOS, Appellant

NO. 71,714 v.

Article 11.071, V.A.C.C.P. Proceeding
from HIDALGO County

THE STATE OF TEXAS, Appellee

ORDER APPOINTING COUNSEL
UNDER ARTICLE 11.071, SEC. 2, V.A.C.C.P.

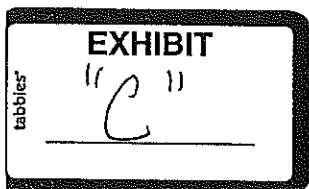
Applicant was convicted of the offense of capital murder in Cause No. CR-1430-92-B, styled The State of Texas v. Robert Moreno Ramos, in the 93rd District Court of Hidalgo County. Punishment was assessed at death. The cause was affirmed on direct appeal in our Cause No. 71,714, Ramos v. State, (Tex.Cr.App. delivered June 26, 1996).

This Court has received documents from the convicting court requiring the appointment of counsel for purposes of a writ of habeas corpus under Article 11.071, V.A.C.C.P. Upon due consideration, Kyle Blair Welch, is appointed for the purpose of representing applicant on a writ of habeas corpus. Accordingly, an application for a writ of habeas corpus, returnable to this Court, must be filed in the convicting court no later than the one hundred and eightieth day after the date of this appointment.

IT IS SO ORDERED THIS THE 22ND DAY OF NOVEMBER, 1996.

PER CURIAM

En banc
Do Not Publish



NO. 71,714 (WRIT NO. 1)

COURT OF CRIMINAL APPEALS OF TEXAS

ROBERT MORENO RAMOS, §
Appellant. §
v. §
THE STATE OF TEXAS, §
Appellee. §

RECEIVED IN
COURT OF CRIMINAL APPEALS

DEC 6 1996

Troy C. Bennett, Jr., Clerk

RAMOS' REQUEST FOR APPOINTMENT OF JOSEPH A. CONNORS III
AS ONE OF RAMOS' ATTORNEYS UNDER ARTICLE 11.071, V.A.C.C.P.

TO THE COURT OF CRIMINAL APPEALS:

ROBERT RAMOS, the above defendant, requests the court to appoint attorney Joseph A. Connors III of McAllen, Texas as one Ramos' own attorneys for purposes of representing Robert Ramos as an applicant for purposes of preparing, filing and litigating an application for writ of habeas corpus under Article 11.071, V.A.C.C.P. As grounds, Robert Ramos shows:

- (1) in the trial court on the record in October, 1996, Robert Ramos requested the appointment of Joseph A. Connors III, as one of his attorneys for purposes of representing applicant for purposes of preparing and filing a writ of habeas corpus under Article 11.071, V.A.C.C.P.;
- (2) attorney Joseph A. Connors III, who represented Robert Ramos on direct appeal, agreed on the record in the trial court in October, 1996, to accept such an appointment; and
- (3) attorney Joseph A. Connors III hereby requests he be so appointed as one of Robert Ramos' attorneys for purposes of representing applicant for purposes of preparing and filing an

EXHIBIT

"D"

APP.RR

*Demond
Maloney
Dec 5, 96*

application for writ of habeas corpus under Article 11.071, V.A.C.C.P.

ARGUMENT

Under Stearnes v. Clinton, 780 S.W.2d 216 (Tex.Cr.App. 1989), a writ of mandamus will be issued directing the trial court to vacate an order removing relator's "court appointed counsel of choice" from the criminal case which had not yet been tried, for the trial court was without authority to do so and should not be able to discriminate between retained and appointed counsel without a semblance of rationality.

Considering said trial courtroom request on the record in this case by Robert Ramos and attorney Connors' above request on the record and Connors' trial courtroom agreement to accept such appointment, it appears the Court of Criminal Appeals should also appoint Robert Ramos' "counsel of choice," for the failure to do so discriminates without semblance of rationality other than fiscal reasons which should have no place in this Court's decision whether or not to appoint in this matter attorney Connors whom Robert Ramos trusts, for due process and equal protection guarantees under the Fourteenth Amendment to the U.S. Constitution demand no less than the court make that "requested appointment" now that there has been full compliance with the "requests" feature of Section 2(e) of Article 11.071, V.A.C.C.P. (1995).

WHEREFORE, PREMISES CONSIDERED, Robert Ramos and Joseph A. Connors III request on the record that pursuant to Article 11.071, V.A.C.C.P., the Court of Criminal Appeals of Texas "shall appoint"

attorney Joseph A. Connors III as one of Robert Ramos' attorneys for purposes of representing applicant in the above cause for purposes of preparing and filing an application for writ of habeas corpus under Article 11.071, V.A.C.C.P.

CERTIFICATE OF SERVICE

I, Joseph A. Connors III, certify that I had delivered or mailed a copy of the foregoing to the office of all attorneys of record on this the 5th day of DEC, 1996.

[Signature]
J. A. Connors III

Respectfully submitted for Defendant by:

Robert Ramos with authority by Joseph Connors
ROBERT RAMOS PRO SE
Defendant

[Signature]
JOSEPH A. CONNORS III
Formerly Appointed Counsel
Texas Bar No. 04705400
McAllen, Texas 78502-5838
(210) 687-8217 FAX 687-8230

THE STATE OF TEXAS §

COUNTY OF HIDALGO §

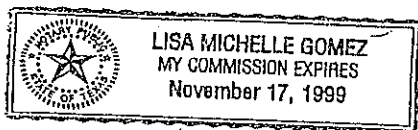
Before me, the undersigned authority, on this day personally appeared Joseph A. Connors III, who being by me duly sworn, on oath stated:

My name is Joseph A. Connors III. I am over eighteen years of age and in good health. I have read Applicant ROBERT MORENO RAMOS' foregoing Request For Appointment Of Joseph A. Connors III As One Of Ramos' Attorneys Under Article 11.071, V.A.C.C.P., and I hereby swear that true and correct are the facts contained in the above request.

[Signature]
JOSEPH A. CONNORS III

SWORN AND SUBSCRIBED before me today, December 4, 1996.

[Signature]
Notary Public In and For
The State of Texas



IN THE
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

ROBERT MORENO RAMOS

VS.

CAUSE NO. 71,714

STATE OF TEXAS

ORDER

On this 6th day of December, 1996, came on to be considered the motion of the appellant's counsel requesting appointment of Joseph A Connors III as one Ramos' attorneys under Article 11.071, V.A.C.C.P..

AND SUCH MOTION is hereby denied.

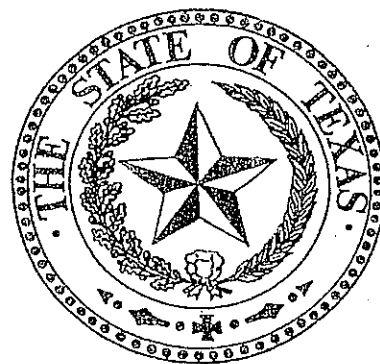
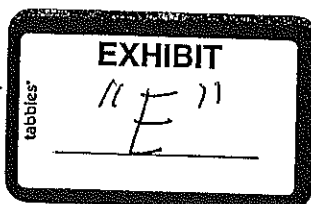
IT IS SO ORDERED.

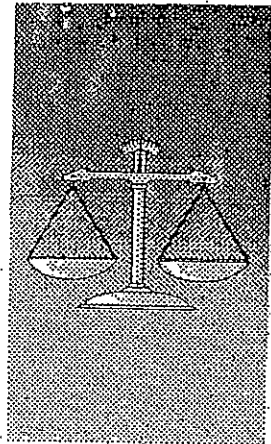
PER CURIAM

A TRUE COPY ATTEST:

Troy C. Bennett, Jr., Clerk
Court of Criminal Appeals

By: Louise Pearson
Louise Pearson, Deputy Clerk





Schulman & Krug

Lawyers

607 West 9th Str
Austin, Texas 78701
Tel. 512/474-4747
Fax: 512/474-8511

Karyl Jean Krug

David A. Schulman
Board Certified in Criminal Law
Texas Board of Legal Specialization

Dec 17, 96
Dona
of [unclear]
[unclear]

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:

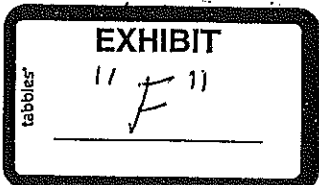
Troy C. Bennett, Jr., Clerk

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 or



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 there is 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 court-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 reason. 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.

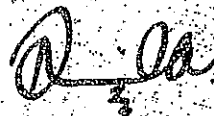
The undersigned respectfully suggests that as both Mr. Ramos and Mr. Connors have requested Mr. Connors' appointment on the record, the Court *could* appoint Mr. Connors. See Art. 11.071 § 2(e)(1), V.A.C.C.P. Given the Court's acknowledged shortage of (a) attorneys available for representation of indigent 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 Article 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

DAS:tc

cc: Robert Moreno Ramos; Joseph A. Connors, III

IN THE
COURT OF CRIMINAL APPEALS

AUSTIN, TEXAS

ROBERT MORENO RAMOS

VS.

CAUSE NO. 71,714

STATE OF TEXAS

ORDER

On this 17th day of December, 1996, came on to be considered the motion of the appellant's counsel for reconsideration of appellant's request that Joseph A. Connors III be appointed as one of Ramos' attorneys under Article 11.071.

AND SUCH MOTION is hereby denied.

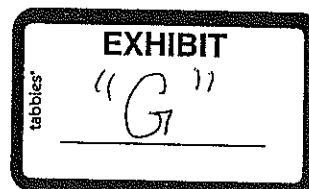
IT IS SO ORDERED.

PER CURIAM

A TRUE COPY ATTEST:

Troy C. Bennett, Jr., Clerk
Court of Criminal Appeals

By: *Louise Pearson*
Louise Pearson, Deputy Clerk





Court of Criminal Appeals

State of Texas
Box 12308
Capitol Station
Austin 78711

TROY C. BENNETT, JR.
CLERK

RICHARD WETZEL
EXECUTIVE ADMINISTRATOR

MICHAEL J. MCCORMICK
PRESIDING JUDGE

CHARLES F. (CHARLIE) BAIRD
MORRIS L. OVERSTREET
LAWRENCE E. MEYERS
STEPHEN W. MANSFIELD
SHARON KELLER
TOM PRICE
SUE HOLLAND
PAUL WOMACK
JUDGES

September 19, 1997

Kyle B. Welch
817 Pecan
McAllen TX 78501

RE: ROBERT MORENO RAMOS, CASE NO. 71,714

Dear Mr. Welch:

You were appointed by the Court to represent Mr. Ramos for the purposes of a writ of habeas corpus under Art. 11.071, V.A.C.C.P. This letter concerns any outstanding claim for services rendered and/or expenses incurred in your representation of the applicant.

At the present time, all funds appropriated for the last biennium have been expended and court appointed attorney claims in excess of \$200,000.00 are pending for work performed before September 1, 1997. Of the 207 counsel appointments made by the Court, only 138 attorneys have submitted claims for compensation. Thus, there are 69 cases in which we have yet to receive claims from appointed attorneys for services rendered before September 1, 1997.

The Court is currently attempting to secure an emergency appropriation through the Governor's office. In order to secure that appropriation, the amount of the claims must be determined. In the event you have not yet done so, the Court would appreciate you submitting a claim for any services rendered and/or expenses incurred prior to September 1, 1997. The claim should be submitted within the next 10 days to Troy C. Bennett, Jr., Clerk, Court of Criminal Appeals, P. O. Box 12308, Capitol Station, Austin, Texas, 78711.

Thank you for your attention and cooperation in this matter.

Sincerely,

Troy C. Bennett, Jr., Clerk
Court of Criminal Appeals

/lp

