

APPENDIX

APPENDIX
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App. 1

APPENDIX A

**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

Application No. WR-88,589-01

[Filed September 19, 2018]

KYLE JAMES MOESCH)
)
APPLICANT)
)

**APPLICATION FOR 11.07 WRIT OF
HABEAS CORPUS**

ACTION TAKEN

DENIED WITHOUT WRITTEN ORDER.

/s/ Bert Richardson

JUDGE

Sept. 19, 2018

DATE

APPENDIX B

**IN THE 264TH DISTRICT COURT
BELL COUNTY, TEXAS**

**CASE NO. 64756
COUNT SINGLE
INCIDENT NO./TRN: 09094223236**

[Filed April 12, 2011]

THE STATE OF TEXAS)
)
)
v.)
)
)
KYLE JAMES MOESCH)
)
)
STATE ID No.: TX 08092124)
)

JUDGMENT OF CONVICTION BY JURY

Judge	HON.	Date	4/8/2011
Presiding:	MARTHA	Judgment	
	J. TRUDO	Entered:	
Attorney for	MURFF	Attorney for	STEPHEN
State:	BLEDSOE	Defendant:	BLYTHE
	AND		AND
	FRED		SCOTT
	BURNS		WILKERS
			ON

**Offense for which Defendant Convicted:
CAPITAL MURDER FOR REMUNERATION**

App. 3

<u>Charging Instrument:</u> INDICTMENT	<u>Statute for Offense:</u> 19.03 Penal Code
<u>Date of Offense:</u> 10/11/2008	
<u>Degree of Offense:</u> CAPITAL FELONY	<u>Plea to Offense:</u> NOT GUILTY
<u>Verdict of Jury:</u> GUILTY	<u>Findings on Deadly</u> <u>Weapon:</u> N/A
<u>Plea to 1st</u> Enhancement Paragraph: N/A	<u>Plea to 2nd</u> Enhancement/ Habitual Paragraph: N/A
<u>Findings on 1st</u> Enhancement Paragraph: N/A	<u>Findings on 2nd</u> Enhancement/Habitual Paragraph: N/A
<u>Punished</u> <u>Assessed by:</u> JURY	<u>Date Sentence</u> <u>Date Sentence to</u> <u>Imposed:</u> 4/8/2011 <u>Commence:</u> 4/8/2011
Punishment LIFE INSTITUTIONAL DIVISION, and Place of TDCJ -NOT PAROLE ELIGIBLE Confinement:	
<hr/> <input type="checkbox"/> SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A. <hr/>	

App. 4

<u>Fine:</u> \$ N/A	<u>Court</u> Costs: \$ NONE	<u>Restitution:</u> \$ N/A	<u>Restitution</u> <u>Payable to:</u> ORDERED
			<input type="checkbox"/> VICTIM (see below)
			<input type="checkbox"/>
			AGENCY/ AGENT (see below)

**Sex Offender Registration Requirements do
not apply to the Defendant. TEX. CODE CRIM.
PROC. Chapter 62.**

The age of the victim at the time of the offense was
N/A

Time	<u>If Defendant is to serve sentence in</u>
Credited:	<u>TDCJ, enter incarceration periods in</u> <u>chronological order.</u>
	From 11/21/2008 to 4/8/2011

**All pertinent information, names and
assessments indicated above are incorporated
into the language of the judgment below by
reference.**

This cause was called for trial in Bell County,
Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

- Defendant appeared in person with Counsel.
- Defendant knowingly, intelligently, and voluntarily
waived the right to representation by counsel in
writing in open court.

App. 5

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

Jury. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

Court. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

No Election. Defendant did not file a written election as to whether the judge or jury should assess

App. 6

punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

Confinement in State Jail or Institutional Division. The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ.** The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the Office of the Bell County District Clerk. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

County Jail—Confinement / Confinement in Lieu of Payment. The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of

App. 7

Bell County, Texas on the date the sentence is to commence. Defendant shall be confined in the **Bell** County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the Office of the Bell County District Clerk. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

Fine Only Payment. The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the **Bell County District Clerk**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

The Court **ORDERS** Defendant's sentence **EXECUTED**.

The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

App. 8

**Furthermore, the following special findings
or orders apply:**

**NOT PAROLE ELIGIBLE. NO COURT COSTS OR
ATTORNEY FEES ORDERED TO BE PAID BY
DEFENDANT.**

Signed and entered on April 11, 2011.

/s/Martha J. Trudo
MARTHA J. TRUDO
JUDGE PRESIDING

Clerk: SB

Kyle James Moesch 64756



Right Thumbprint

APPENDIX C

Effective: January 1, 2014 Rev. 01/14/14

Rev. 01/14/14

**IN THE COURT OF CRIMINAL APPEALS OF
TEXAS**

Case No. 64756-A
(The Clerk of the convicting court
will fill this line in.)

[Filed October 13, 2017]

**APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY
CONVICTION UNDER CODE OF CRIMINAL
PROCEDURE, ARTICLE 11.07**

NAME: Kyle James Moesch

DATE OF BIRTH: [REDACTED], 1985

PLACE OF CONFINEMENT: Telford Unit 3899 St.
Hwy. 98 New Boston, TX 75570

TDCJ-CID NUMBER: #01708634

SID NUMBER: Unknown

(1) **This application concerns** (check all that apply):

a conviction parole
 a sentence mandatory supervision

time credit **out-of-time appeal or petition for discretionary review**

(2) What district court entered the judgment of the conviction you want relief from?
(Include the court number and county.)

264th Judicial District, Bell County, Texas

(3) What was the case number in the trial court?

Trial Court Case No. #64756

(4) What was the name of the trial judge?

Martha J. Trudo

(5) Were you represented by counsel? If yes, provide the attorney's name:

Yes, Stephen E. Blythe SBDT No. #02522000

(6) What was the date that the judgment was entered?

April 8, 2011

(7) For what offense were you convicted and what was the sentence?

Capital Murder, Life without Parole

(8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you

convicted of and what was the sentence in each court?

None

(9) What was the plea you entered? (Check one.)

guilty-open plea guilty-plea bargain
 not guilty *nolo contendere/no contest*

If you entered different pleas to counts in a multi-count indictment, please explain:

None

(10) What kind of trial did you have?

no jury jury for guilt and punishment
 jury for guilt, judge for punishment

(11) Did you testify at trial? If yes, at what phase of the trial did you testify?

No, did not testify

(12) Did you appeal from the judgment of conviction?

yes no

If you did appeal, answer the following questions:

(A) What court of appeals did you appeal to?

Third District, at Austin, Tx.

(B) What was the case number?

No. #03-11-0267-CR

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name:

Yes, William Witbeck Torrey

(D) What was the decision and the date of the decision? Affirmed, 8/24/2012

(13) Did you file a petition for discretionary review in the Court of Criminal Appeals?

yes no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? Case No. #PD-1382-12

(B) What was the decision and the date of the decision? Refused, 3/27/2013

(14) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *this conviction*?

yes no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? _____

(B) What was the decision and the date of the decision? _____

(C) Please identify the reason that the current claims were not presented and could not have been presented on your previous application.

(15) Do you currently have any petition or appeal pending in any other state or federal court?

yes no

If you answered yes, please provide the name of the court and the case number:

(16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

yes no

If you answered yes, answer the following questions:

(A) What date did you present the claim?

(B) Did you receive a decision and, if yes, what was the date of the decision?

If you answered no, please explain why you have not submitted your claim:

(17) Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.* If you have more than four grounds, use pages 14 and 15 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.

You may include with the form a memorandum of law if you want to present legal authorities, but the Court will *not*

consider grounds for relief set out in a memorandum of law that were not raised on the form. The citations and argument must be in a memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum.

GROUND ONE: Ineffective Assistance of Counsel

In violation of applicants 6th Amendment right of the United States Constitution, where defense counsel failed to interview potential alibi witnesses

FACTS SUPPORTING GROUND ONE:

Applicant, Moesch, asserts a claim of Ineffective Assistance of Counsel, where defense counsel failed to conduct a proper pre-trial investigation and locate witnesses who could have provided testimony that applicant was only at the deceased's apartment to party and meet up with more people there. The witness heard deceased invite applicant and others to his apartment to party. Women (3) agreed and plan to come over, but canceled after deceased and applicant were already at apartment waiting for them. This testimony would have undermined State's theory that applicant set up the deceased to be murdered. Failure to interview these (3) women was Ineffective. Applicant was denied a Constitutional Right is Guaranteed by 6th Amendment. See Memorandum of Law

GROUND TWO: Ineffective Assistance of Counsel

In violation of Applicants 6th Amendment right of U.S. Constitution, where defense counsel failed to recover text messages during Pre-trial Investigation

FACTS SUPPORTING GROUND TWO:

Applicant asserts a claim of Ineffective Assistance of Counsel, where defense counsel Blythe failed to recover “critical” text messages between applicant and co-defendant (Valdez) because of improper and untimely Pre-trial investigation. Texts also to other Parties in events leading up to murder would have shown applicant was inviting others over to apartment. Over two years neglect caused the loss of “critical” evidence in Blythe’s own words. The same texts were used against applicant as point of conviction because of assumption of what texts said or implicated. Applicant was begging for these same texts to be found. Applicant asked Blythe and even District Attorney’s Office, which was reason applicant voluntarily handed phone over one month after murder. Nearly (2) and a half years before trial. Texts content never found though. See Memorandum of Law

GROUND THREE: Ineffective Assistance of Counsel

Applicant was misinformed by his defense counsel of his right to speedy trial, violating his 6th Amendment of the U.S. Constitution.

FACTS SUPPORTING GROUND THREE:

Applicant, Moesch, asserts a claim of Ineffective Assistance of Counsel, where defense counsel Blythe said applicant wasn’t eligible for a speedy trial

“because he had Co-defendants.” Only way possible for a speedy trial as if they also filed for it. The ensuing delay costed applicant loss of evidence and witnesses vital two applicant’s defense. See Memorandum of Law

GROUND FOUR: Denied Due Process and Equal Protection of Law

Denied Due Process, violation of 6th & 14th Amendment of U.S. Constitution, where State’s witnesses testified in violation of Witness Sequestration Rule.

FACT SUPPORTING GROUND FOUR:

Applicant asserts he was denied Due Process and Equal Protection of Law, in violation of 6th & 14th Amendments, where a State’s witness (Bill Curry) was allowed to testify in violation of Sequestration Rule. After hearing other witnesses testify, he then was allowed to testify and even contradicted testimony that specifically pertained to guilt and innocence. A violation that caused the trial proceedings to be fundamentally unfair. Trial court even invoked “the Rule” in beginning of trial. See Memorandum of Law

GROUND Five: Denied Due Process and Equal Protection of the Law

Denied Due Process in violation of 14th Amendment of the U.S. Constitution, where District Attorney and his investigator withheld text content.

FACTS SUPPORTING GROUND:

Applicant asserts that the District Attorney’s Office and their Investigator withheld valuable, vital evidence during Capital murder trial. Evidence consisting of cell

phone text message content. The reason why prior stated phone, Applicant turned over, early in investigation was to show in the texts that Applicant had no idea what Co-defendant was doing and was misled. Not only was Applicant's phone in possession of D.A.'s Office in November, 2008 but also co-defendant John Valdez's phone. Combined with texts to and from Sandra Elliot (and friends) motives and intent would have been clear why Applicant, Moesch, was at Ryan Sullivan's. But this evidence was never recovered even though in D.A.'s hands early on in investigation. Phone companies hold text content up to 90 days, sometimes more. A simple subpoena would have produced the entire conversations taking place between all Parties on the night of Ryan Sullivan's murder. Now this evidence may be lost forever and was the only way to show Applicant's innocence. See Memorandum of Law.

GROUND: Six: Ineffective Assistance of Counsel

In violation of Applicant's 6th Amendment of the U.S. Constitution, where trial counsel failed to object to violation of Sequestration Rule.

FACTS SUPPORTING GROUND:

Applicant wishes to incorporate, without having to repeat, all the facts and issues, related to grounds of errors one, two, and four.

Applicant asserts that the witness rule was invoked at the beginning of trial. Investigator Curry violated that rule by sitting at Prosecutions table throughout most of the trial and heard many of the witnesses testify. Mr. Curry then shaped his testimony to what he heard and contradicted others when he testified.

Simply stated he violated “the rule.” See Memorandum of Law

GROUND: Seven: Ineffective Assistance of Counsel

In violation of Applicant’s 6th Amendment of the U.S. Constitution, where trial counsel failed to object to inconsistent witness statements.

FACTS SUPPORTING GROUND:

Applicant asserts that the trial counsel failed to object to inconsistent statements made by State’s main witness. Original statements made by witness, (Jeremy Jacobs) stated things that meant Applicant was scared and confused because of what Valdez (co-defendant) had done and was looking for help, but testified to something entirely different which implied Applicant was Party to murder. Third Court of Appeals even confirmed it was a main point of evidence that caused conviction. Counsel should have impeached witness due to this new version of facts he testified to, 2 years Plus after, where first testimony likely more accurate than his testimony. See Memorandum of Law.

GROUND Eight: Ineffective Assistance of Counsel

In violation of Applicant’s 6th Amendment of the U.S. Constitution, where trial counsel failed to present witnesses in favor of Applicant.

FACTS SUPPORTING GROUND:

Applicant asserts a claim of ineffective representation. Where he verbally agreed on record during trial, witnesses he had at court and would put on the stand, and Applicant’s defense. Instead only one witness was called, Applicant’s own Aunt, who was only a character

witness. Compound this with the other witnesses and texts that he failed to obtain and nothing was done to present adequate defense. See Memorandum of Law.

GROUND: Nine: Ineffective Assistance of Counsel

In violation of Applicant's 6th Amendment of the U.S. Constitution, where Appellate counsel failed to discuss case with Applicant.

Facts Supporting Ground:

Applicant, (Moesch) asserts Appellate Attorney failed to file grounds that Applicant asked in letter. Appellate Attorney didn't talk with Applicant at all and his preparation to file Applicant's Direct Appeal. Failure to do this led to a short and under developed Direct Appeal. See Memorandum of Law.

Ground (10): Denied Due Process and Equal Protection of the Law

Denied Due Process in violation of 14th Amendment of the U.S. Constitution where District Attorney withdrew plea bargain for testimony.

Facts Supporting Ground:

Applicant in the trial counsel Scott Wilkerson established verbal agreement with District Attorney, Lew Bechtol. Bechtol agreed for cooperation and testimony charges would not be enhanced beyond 3rd degree felony (which was tampering with evidence. Originally charged with), but later Bechtol denied making that agreement, after Applicant upheld his end and Bechtol got what he wanted. See Memorandum of Law.

Ground (11): Denied Due Process and Equal Protection of Law Denied Due Process in violation of 14th Amendment of U.S. Constitution where there was “no evidence” and records devoid of evidentiary support.

Fact Supporting Ground:

Applicant asserts claim that he was denied Due Process and Equal Protection of the Law were no evidence supports the conviction, especially where very little evidence, has been seen in a different light, as shown in this appeal. The Third Court of Appeals stated all the points of evidence that led to a conviction against Moesch. All the points that the Court outlined were properly refuted and shown with shed new light on the case. Please incorporate all the facts and issues without having them repeated relating Grounds of errors one through ten. All the assumptions of evidence against applicant lead to a wrongful conviction. See Memorandum of Law.

Ground (12): Ineffective Assistance of Counsel

In violation of the 6th Amendment of the U.S. Constitution where Appellate Attorney was untimely in preparing and filing 11.07.

Facts Supporting Ground:

Applicant’s 12th Ground of relief, asserts a claim that Appellate Counsel was ineffective where he failed to file Habeas Corpus in timely manner. Appellate Attorney was hired and paid total of Ten Thousand dollars but only served to get Applicant time barred despite warnings by Applicant. The AEDPA’s one year statute of limitations clearly outline the standards.

Appellate Attorney continually stated things were okay. See Mem. of Law

**WHEREFORE, APPLICANT PRAYS THAT THE
COURT GRANT APPLICANT RELIEF TO
WHICH HE MAY BE ENTITLED
IN THIS PROCEEDING.**

VERIFICATION

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF _____

_____, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."

Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS
____ DAY OF __, 20 __.

Signature of Notary Public

PETITIONER'S INFORMATION

Petitioner's printed name: _____

State bar number, if applicable: _____

Address: _____

Telephone: _____

Fax: _____

INMATE'S DECLARATION

I, Kyle James Moesch, am the applicant / petitioner (circle one) and being presently incarcerated in Telford

App. 24

Unit, New Boston Tx., declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on Sep. 24th, 2017.

/s/Kyle James Moesch
Signature of Applicant Petition (circle one)

PETITIONER'S INFORMATION

Petitioner's printed name: Kyle James Moesch

Address: Telford Unit

3899 St. Hwy. 98

New Boston, Tx 75570

Telephone: _____

Fax: _____

Signed on Sep. 24, 2017.

/s/Kyle James Moesch
Signature of Petitioner

Rev. 01/14/14