

**Affirmed and Memorandum Opinion filed August 30, 2018.**



**In The  
Fourteenth Court of Appeals**

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**NO. 14-16-00413-CR  
NO. 14-16-00414-CR**

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**OVERILLE DENTON THOMPSON, JR, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the 185th District Court  
Harris County, Texas  
Trial Court Cause Nos. 1445929 & 1445930**

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**MEMORANDUM OPINION**

Appellant brings this pro se appeal, complaining in a single issue that he was deprived of his constitutional right to a speedy trial. We conclude that this issue has not been preserved for appellate review because appellant never obtained an adverse ruling on his pro se motions to dismiss. Accordingly, we overrule this issue and affirm the trial court's judgments.

## **BACKGROUND**

Appellant was arrested in October 2014 and charged with two separate offenses: the first was possession of a controlled substance, and the second was possession of a firearm as a felon. Even though counsel was appointed to represent him in these cases, appellant filed numerous pro se motions as he remained in custody awaiting his trial. These motions sought various forms of relief, including a reduction in bail, a dismissal of charges based on the unlawfulness of a search, a hearing to determine the truthfulness of an affidavit, and the inspection of evidence. The trial judge did not rule on these motions. Instead, she noted in the margins of one of appellant's filings that appellant "is represented by counsel and motions have not been adopted."

In July 2015, appellant filed two additional pro se motions to dismiss, this time based on the alleged denial of his right to a speedy trial. Aside from being filed in separate cause numbers (one in the drug case, and the other in the firearm case), the two motions were substantively identical. Appellant asserted in these motions that the State was delaying his trial because the State had recently charged him with a third offense for murder. Appellant then argued that the delay was unjustifiable because the first two charges were unrelated to the murder charge. Appellant accordingly sought a dismissal of the first two charges. The trial judge did not rule or conduct a hearing on either motion.

In August 2015, appellant's trial counsel moved to withdraw because appellant claimed that counsel was colluding with the State against appellant's best interests. The trial judge granted the motion and appointed substitute counsel, who remained on the case through November 2015, when appellant successfully moved to represent himself.

After electing self-representation, appellant never re-urged his speedy-trial motions. He did, however, move to disqualify the trial judge, to discover the identity of a confidential informant, and to obtain transcripts from the grand jury proceedings. The trial judge denied these and other motions. And in one hearing in advance of trial, the judge specifically acknowledged appellant's speedy-trial motions without making a ruling:

Court: Okay. So, I just want to make sure, other than just resetting the case one week, everything—other than that, we're good to go? Is that right? Everybody's ready for trial if we just move the case a week?

Appellant: Well, I mean, once I get an investigator on the matter but I haven't done that yet. So, if I can come back in a week just to update the Court on that situation.

Court: Doesn't matter to me. We'll just leave your case on March 8th and we'll be ready to go. You don't need to keep coming back to court to hire—

Appellant: What I'm saying is if I can't get the investigator on the matter in a timely way, if I have to schedule ahead another seven days until I hear back from them or what have you. See? That's what I mean, so—

Court: I'm just going to leave it on March 8th and if you have a motion for continuance on March the 8th, I'll take it up at that point.

Appellant: Yes, ma'am.

Court: Okay? That way there's no need for you to keep coming back to court and hopefully you'll get somebody quickly and get moving because I know you have a speedy trial motion on file and your inability to go to trial—

Appellant: Oh, I actually do not want to—I do not want to—yes, Your Honor.

Court: You do not want what?

Appellant: I really don't want to put it off any further than it has to be.

Court:        Okay.

When the scheduled trial date arrived, the State announced that it was not ready for trial because of a potential *Brady* issue that required additional processing. Appellant responded that he did not wish to go forward with trial that day either, which meant that the trial was reset. In advance of the new trial date, the State announced that it would only be trying the drug case and the firearm case (not the murder case as well).

When the actual trial date arrived, appellant agreed to forgo self-representation, and his substitute counsel filled in again. Substitute counsel did not adopt appellant's pro se motions to dismiss.

The jury convicted appellant in both the drug case and firearm case, and now appellant challenges both judgments of conviction in this pro se appeal.

### ANALYSIS

We begin with the State's threshold argument that appellant has not preserved his complaint for appellate review. *See Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014).

To preserve a complaint for appellate review, the complaining party must first make a timely request, objection, or motion that states the grounds for the ruling sought. *See Tex. R. App. P. 33.1*. The complaining party must then obtain an adverse ruling from the trial court on his request, objection, or motion, or the complaining party must object to the trial court's refusal to rule. *Id.* These rules express the general policy that an appellate court should not reverse a trial court on a matter that was never brought to the trial court's attention. *See Carranza v. State*, 960 S.W.2d 76, 78–79 (Tex. Crim. App. 1998).

In this case, appellant filed two speedy-trial motions, which are pertinent to the first requirement in our error-preservation rules. However, appellant filed these motions pro se at a time when he was represented by counsel, and counsel never adopted or ratified the motions. Because a defendant has no right to hybrid representation, the trial court was free to disregard appellant's pro se motions. See *Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007).

The trial court eventually allowed for counsel to withdraw and for appellant to represent himself, but during the time of his self-representation, appellant did not file a new set of speedy-trial motions, nor did he request a ruling on his previously filed motions. Because appellant never obtained an adverse ruling on his pro se motions, we conclude that he has not preserved his complaint for appellate review. See *Guevara v. State*, 985 S.W.2d 590, 592 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) (a speedy-trial complaint was not preserved where the defendant filed his speedy-trial motion pro se and never obtained a ruling).

Appellant raises three arguments in his reply brief in an effort to avoid the application of our error-preservation rules.

First, he contends that our error-preservation rules have the effect of reinstating the demand-waiver rule, which the Supreme Court repudiated in *Barker v. Wingo*, 407 U.S. 514 (1972). Our court has already rejected this point: “The demise of the demand-waiver doctrine affects how courts are to calculate the length of the delay [in a speedy-trial analysis]; it does not dissolve the longstanding rule that a defendant must present his objections in the trial court or waive them on appeal.” *Guevara*, 985 S.W.2d at 593.

Second, appellant contends that his speedy-trial complaint “actually speaks to the bias of” the trial judge, which he characterizes as a structural error that cannot be waived. This point also lacks merit. Even though bias is a structural error that

cannot be waived, we have specifically held that the right to a speedy trial can be waived. *Id.* (citing *Marin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993)). Furthermore, appellant has not established how any judicial bias could have impacted his speedy-trial complaint, considering that (1) the trial judge neither adversely ruled nor refused to rule on his speedy-trial motions, and (2) when the trial judge actually gave appellant an opportunity to discuss his speedy-trial motions, appellant responded by saying that “[he] really [doesn’t] want to put it off any further than it has to be.”

Third, appellant contends that he did preserve error under our rules because he moved to disqualify the trial judge and he obtained an adverse ruling on his motion to disqualify. But that motion was based on allegations that the trial judge was “in [e]ffect act[ing] as counsel with obvious wrongful intent to misrepresent the Defendant and assist [the] State in its cause, which is the very manifestation of bias/prejudice.” The motion was not based on the denial of a speedy trial.

We conclude that none of the reasons stated in appellant’s reply brief excuses his failure to preserve error in the trial court.

## CONCLUSION

The trial court’s judgments are affirmed.

/s/ Tracy Christopher  
Justice

Panel consists of Justices Boyce, Christopher, and Busby.  
Do Not Publish — Tex. R. App. P. 47.2(b).



Appendix B

CASE No. 144592901010  
INCIDENT NO./TRN: 9170299293A001

P2

THE STATE OF TEXAS

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IN THE 185TH DISTRICT

V.

COURT

THOMPSON, OVERILLE

HARRIS COUNTY, TEXAS

STATE ID No.: TX08375729

**JUDGMENT OF CONVICTION BY JURY**

Judge Presiding:	HON. SUSAN BROWN	Date Judgment Entered:	05/04/2016
Attorney for State:	GREG HOULTON	Attorney for Defendant:	MARTIN, RAY B.
<u>Offense for which Defendant Convicted:</u>			
POSS W/INT DEL CS PG1 >=4 <200 GRAMS" >=4 <200 GRAMS" >=4 <200 GRAMS			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		N/A	
<u>Date of Offense:</u>			
10/22/2014			
<u>Degree of Offense:</u>		<u>Plea to Offense:</u>	
1ST DEGREE FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		YES, A FIREARM	
Plea to 1 <sup>st</sup> Enhancement Paragraph:	N/A	Plea to 2 <sup>nd</sup> Enhancement/Habitual Paragraph:	N/A
Findings on 1 <sup>st</sup> Enhancement Paragraph:	N/A	Findings on 2 <sup>nd</sup> Enhancement/Habitual Paragraph:	N/A
Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:	
JURY	05/06/2016	05/06/2016	
Punishment and Place of Confinement:	80 YEARS INSTITUTIONAL DIVISION, TDCJ		

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED. DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A.

<u>Fine:</u>	<u>Court Costs:</u>	<u>Restitution:</u>	<u>Restitution Payable to:</u>
\$ 10,000	As Assessed	\$ N/A	<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.

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:	From:	10/22/2014	to	05/06/2016	From:		to	
	From:		to		From:		to	
	From:		to		From:		to	

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A/DAYS NOTES: N/A

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 Harris 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.

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 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 Harris County District Clerk's office. 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 Harris County, Texas on the date the sentence is to commence. Defendant shall be confined in the Harris County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the Harris County District Clerk's office. 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 Harris 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.

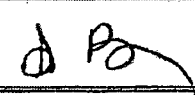
The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated. The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated. The Court further **ORDERS** that if the defendant is convicted of two or more offenses in a single criminal action, that each cost or fee amount must be assessed using the highest category of offense. Tex. Code Crim. P. art. 102.073.

Furthermore, the following special findings or orders apply:

**THE COURT FINDS DEFENDANT USED OR EXHIBITED A DEADLY WEAPON, NAMELY, A FIREARM, DURING THE COMMISSION OF A FELONY OFFENSE OR DURING IMMEDIATE FLIGHT THEREFROM OR WAS A PARTY TO THE OFFENSE AND KNEW THAT A DEADLY WEAPON WOULD BE USED OR EXHIBITED. TEX. CODE CRIM. PROC. ART. 42.12 §3G.**

Signed and entered on 05/06/2016

X

  
**SUSAN BROWN**  
JUDGE PRESIDING





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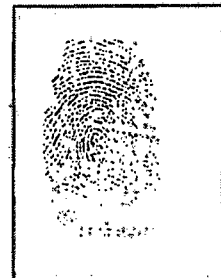
Notice of Appeal Filed: \_\_\_\_\_

Mandate Received: \_\_\_\_\_ Type of Mandate: \_\_\_\_\_

After Mandate Received, Sentence to Begin Date is: \_\_\_\_\_

Jail Credit:  
Def. Received on at ☐ AM ☐ PM  
By: Deputy Sheriff of Harris County

Clerk: COLLINS  
Case Number:  
Defendant: THOMPSON, OVERILLE  
EN/KR04:  LCBT:  \*LCBU:  EN/KR18: 



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CASE No. 144593001010  
INCIDENT No./TRN: 9170299293A002

THE STATE OF TEXAS

V.

THOMPSON, OVERILLE

STATE ID No.: TX08375729

§ IN THE 185TH DISTRICT  
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§ COURT  
§  
§ HARRIS COUNTY, TEXAS  
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§

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FELON POSS WPN			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		N/A	
<u>Date of Offense:</u>			
10/22/2014			
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3RD DEGREE FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		N/A	
<u>Plea to 1<sup>st</sup> Enhancement Paragraph:</u>		<u>Plea to 2<sup>nd</sup> Enhancement/Habitual Paragraph:</u>	
N/A		N/A	
<u>Findings on 1<sup>st</sup> Enhancement Paragraph:</u>		<u>Findings on 2<sup>nd</sup> Enhancement/Habitual Paragraph:</u>	
N/A		N/A	
<u>Punished Assessed by:</u>		<u>Date Sentence Imposed:</u>	<u>Date Sentence to Commence:</u>
JURY		05/06/2016	05/06/2016
<u>Punishment and Place of Confinement:</u>			
10 YEARS INSTITUTIONAL DIVISION, TDCJ			

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A.

<u>Fine:</u>	<u>Court Costs:</u>	<u>Restitution:</u>	<u>Restitution Payable to:</u>
\$ 10,000	As Assessed	\$ N/A	<input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below)
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The age of the victim at the time of the offense was N/A.			

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

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	From: to	From: to
	From: to	From: to

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N/A DAYS NOTES: N/A

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☒ Defendant appeared in person with Counsel.

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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 Harris County District Clerk's office. 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.

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Execution / Suspension of Sentence (select one)

☒ The Court ORDERS Defendant's sentence EXECUTED.

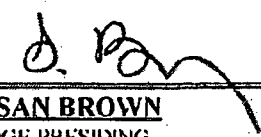
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The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated. The Court further ORDERS that if the defendant is convicted of two or more offenses in a single criminal action, that each cost or fee amount must be assessed using the highest category of offense. Tex. Code Crim. P. art. 102.073.

Furthermore, the following special findings or orders apply:

Signed and entered on 05/06/2016

X   
SUSAN BROWN  
JUDGE PRESIDING

Notice of Appeal Filed: MAY 06 2016

Mandate Received: \_\_\_\_\_ Type of Mandate: \_\_\_\_\_

After Mandate Received, Sentence to Begin Date is: \_\_\_\_\_

Jail Credit: \_\_\_\_\_  
Def. Received on at ☐ AM ☐ PM  
By: \_\_\_\_\_ Deputy Sheriff of Harris County

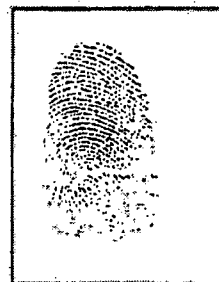
Clerk: J COLLINS

Case Number:

Defendant: THOMPSON, OVERLIE  
EN/KR04 999 CBT: ✓

LCBU: ✓

EN/KR18 999



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**Justices**

WILLIAM J. BOYCE  
TRACY CHRISTOPHER  
MARTHA HILL JAMISON  
J. BRETT BUSBY  
JOHN DONOVAN  
MARC W. BROWN  
KEN WISE  
KEVIN JEWELL



**Chief Justice**

KEM THOMPSON FROST

**Clerk**

CHRISTOPHER A. PRINE  
PHONE 713-274-2800

**Fourteenth Court of Appeals**

301 Fannin, Suite 245  
Houston, Texas 77002

Tuesday, December 18, 2018

Overille Denton Thompson Junior  
TDCJ # 2068451  
McConnel Unit  
3001 S. Emily Dr  
Beeville, TX 78102

Eric Kugler  
Assistant District Attorney  
1201 Franklin  
Suite 600  
Houston, TX 77002-1923  
\* DELIVERED VIA E-MAIL \*

Michael A. McEnrue  
PO Box 70978  
Houston, TX 77270  
\* DELIVERED VIA E-MAIL \*

RE: Court of Appeals Number: 14-16-00413-CR  
Trial Court Case Number: 1445929

Style: Overille Denton Thompson, Jr v. The State of Texas

Please be advised that on this date the court **DENIED PRO SE'S** motion for rehearing en banc in the above cause.

**Panel Consists Of Chief Justice Frost and Justices Boyce, Christopher, Jamison, Busby, Donovan, Wise and Jewell (Justice Brown not participating)**

Sincerely,

/s/ Christopher A. Prine, Clerk

Appendix D

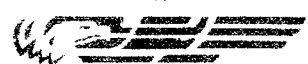
OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308 CAPITOL STATION, AUSTIN, TEXAS 78711

STATE OF TEXAS  
PENALTY FOR  
PRIVATE USE

PRESORTED  
FIRST CLASS



U.S. POSTAGE >>> PITNEY BOWES



ZIP 78701 \$ 000.26<sup>8</sup>  
02 1W

0001401603 MAY 02 2019

5/1/2019

THOMPSON, OVERILLE DENTON JR.

PD-1352-18

COA No. 14-16-00413-CR

Tr. Ct. No. 1445929

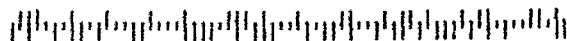
On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

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26B

OVERILLE DENTON THOMPSON JR.  
MCCONNELL UNIT - TDC # 2068451  
3001 S. EMILY DR.  
BEEVILLE, TX 78102

MIWNAB 78102



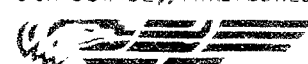
OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308 CAPITOL STATION, AUSTIN, TEXAS 78711

STATE OF TEXAS  
PENALTY FOR  
PRIVATE USE

PRESORTED  
FIRST CLASS



U.S. POSTAGE >>> PITNEY BOWES



ZIP 78701 \$ 000.26<sup>8</sup>  
02 1W

0001401603 MAY 02 2019

5/1/2019

THOMPSON, OVERILLE DENTON JR.

PD-1353-18

COA No. 14-16-00414-CR

Tr. Ct. No. 1445930

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

Deana Williamson, Clerk

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OVERILLE DENTON THOMPSON JR.  
MCCONNELL UNIT - TDC # 2068451  
3001 S. EMILY DR.  
BEEVILLE, TX 78102

MIWNAB 78102



**Additional material  
from this filing is  
available in the  
Clerk's Office.**