

APPENDIX A

Judgment of the Court of Criminal Appeals of Texas

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

7/23/2019

COA No. 05-17-01207-CR

BOOKER, MARCUS BARTHOLOMEW Tr. Ct. No. F-1652028-U PD-1400-18
On this day the Appellant's Pro Se motion for the Court of Criminal Appeals to
provide a free copy of the appellate record is denied.

Deana Williamson, Clerk

MARCUS BARTHOLOMEW BOOKER
TELFORD UNIT - TDC# 2145492
3899 STATE HWY. 98
NEW BOSTON, TX 75570

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P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

7/23/2019

COA No. 05-17-01207-CR

BOOKER, MARCUS BARTHOLOMEW Tr. Ct. No. F-1652028-U PD-1400-18
On this day the Appellant's Pro Se motion for the Court of Criminal Appeals to
provide a free copy of the appellate record is denied.

Deana Williamson, Clerk

DISTRICT ATTORNEY DALLAS COUNTY
FAITH JOHNSON
APPELLATE SECTION
133 N. RIVERFRONT BLVD, LB 19
DALLAS, TX 75207
* DELIVERED VIA E-MAIL *

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7/23/2019

COA No. 05-17-01207-CR

BOOKER, MARCUS BARTHOLOMEW Tr. Ct. No. F-1652028-U PD-1400-18
On this day the Appellant's Pro Se motion for the Court of Criminal Appeals to
provide a free copy of the appellate record is denied.

Deana Williamson, Clerk

5TH COURT OF APPEALS CLERK
LISA MATZ
600 COMMERCE, 2ND FLOOR
DALLAS, TX 75202
* DELIVERED VIA E-MAIL *

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7/23/2019

COA No. 05-17-01207-CR

BOOKER, MARCUS BARTHOLOMEW Tr. Ct. No. F-1652028-U PD-1400-18
On this day the Appellant's Pro Se motion for the Court of Criminal Appeals to
provide a free copy of the appellate record is denied.

Deana Williamson, Clerk

STATE PROSECUTING ATTORNEY
STACEY SOULE
P. O. BOX 13046
AUSTIN, TX 78711
* DELIVERED VIA E-MAIL *

APPENDIX B

**Applicant's Motion for Access to Appellate Record
Without Charge**

NO. _____

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

EX PARTE,

MARCUS BARTHOLOMEW BOOKER,
Applicant.

*On Application for a Writ of Habeas Corpus
Under Code of Criminal Procedure, Article 11.07
Cause No. F16-52028-U In the 291st Judicial District Court
From Dallas County*

APPLICANT'S MOTION FOR ACCESS TO APPELLATE RECORD
WITHOUT CHARGE

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Marcus Bartholomew Booker, Applicant, moves this Court to provide him access to a copy of the appellate record, including the Clerk's and Reporter's Records. In support of this motion, Booker presents to the Court the following:

JURISDICTION

This Court has original jurisdiction and the trial court has limited jurisdiction pursuant to Code of Criminal Procedure, Article 11.07, whereas Booker was convicted and sentenced within the 291st Judicial District Court of Dallas County, Texas.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides that "No person...shall..be deprived of life, liberty, or property, without due process of law..."

ARGUMENT

Based on being indigent, Booker is entitled to access to the Clerk's and Reporter's Records without charge in an initial-review habeas corpus proceeding that is required under state law as a prerequisite to further collateral review. *See Griffin v. Illinois*, 351 U.S. 12 (1956).

Where, as here, the initial-review habeas corpus proceeding is the first designated proceeding for Booker to raise a claim of ineffective assistance of counsel at trial, the collateral proceeding is in many ways the equivalent of Booker's direct appeal as to the ineffective-assistance claim. *See Martinez v. Ryan*, 132 S.Ct. 1309, 1317 (2012). Without access to the Clerk's and Reporter's Records, Booker will have extreme difficulties vindicating a substantial ineffective-assistance-of-counsel claim. *Id.* By deliberately choosing to move trial-ineffectiveness claims outside of the direct appeal process, where access to the Clerk's and Reporter's Records is constitutionally guaranteed, the State significantly diminishes Booker's ability to file such claims. *Id.* at 1318; *see also Trevino v. Thaler*, 569 U.S. 1611 (2013) (the recognized exception in *Martinez* applies to Texas).

Additionally, the requested records were prepared for the direct appeal of this cause in Court of Appeals No. 05-17-01207-CR. The Court only need to order a copy of the records be furnished

to Booker without charge. Booker did attempt to obtain a copy of the records from his appellate counsel, Mr. John Tatum, but he advised Booker that the records are only provided to him on CD, which is required by the 291st Judicial District Court's policy to check-out the CD or DVD and return it to the court after the Appellant Brief is completed. *See Exhibit A.*

Applicant's Indigency

The 291st District Court has twice made a finding that Booker is indigent when it appointed trial counsel and again when it appointed appellate counsel and a free Clerk's and Reporter's Record for direct appeal. Booker has been continuously incarcerated since February 9, 2016. Booker is presently incarcerated in the Correctional Institutions Division of the Texas Department of Criminal Justice where he is unable to earn or possess money. Booker is penniless, destitute, and an indigent person, who is not financially able to purchase a copy of the records. Booker's Declaration of Indigency is attached and incorporated hereto as Exhibit B. A certified six month history statement of Booker's inmate trust fund account is also attached and incorporated hereto as Exhibit C.

In the Interests of Justice

Considering that the initial-review habeas corpus proceeding is Booker's first designated proceeding for him to raise a claim on ineffective assistance of counsel at trial, he will have difficulty establishing the existence of ineffective assistance of trial counsel and be denied a meaningful opportunity to present such claims without access to the records. He further contends that the United States Constitution and clearly established Uni-

ted States Supreme Court case precedent mandates access to the Clerk's and Reporter's Record without charge for defendants who are indigent.

The Texas Legislature has commanded that "[w]ithin the time for perfecting the appeal, and appellant who is unable to pay for the appellate record may, by motion and affidavit, ask the trial court to have the appellate record furnished without charge. If after hearing the motion the court finds that the appellant cannot pay or give security for the appellate record, the court must order the reporter to transcribe the proceedings. When the court certifies that the appellate record has been furnished to the appellant..." TEX. R. APP. PROC. 20.2 However, under Texas's system for addressing claims of ineffective assistance of trial counsel has serious flaws. *See Trevino*, 133 S.Ct. at 1919. By deliberately choosing to move trial-ineffectiveness claims outside of the direct appeal process, the State consequentially curtails Booker's ability to file such claims. *See Id.* at 1318.

JUDICIAL NOTICE REQUEST

Booker respectfully requests that the Court take judicial notice of all documents and records on file with the Court, District Clerk, and the District Attorney, pertaining to the criminal proceeding in Cause No. F16-52028-U, 291st Judicial District Court.

CONCLUSION

Booker is an eligible indigent defendant who, in the interests of justice, is entitled to access to the Clerk's and Reporter's Records without charge for his initial-review habeas corpus proceeding.

PRAYER

Marcus Bartholomew Booker prays that the Court finds that he is indigent, concludes that the interests of justice require access to the Clerk's and Reporter's Records without charge, grant this motion, and order the Court Clerk and Court Reporter to furnish the records without charge.

Dated: April 23, 2019

Respectfully requested,

Marcus Bartholomew Booker
MARCUS BARTHOLOMEW BOOKER
DEFENDANT/APPLICANT
TDCJ No. 2145492
Barry B. Telford Unit
3899 State Highway 98
New Boston, Texas 75570
Main Phone:(903)628-3171

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served by placing same in the United States Mail, first-class postage prepaid, on the 23rd day of April, 2019, addressed to:

Dallas County Criminal District Attorney
133 N. Riverfront Blvd., LB-19
Dallas ,Texas 75207-4399

Marcus Bartholomew Booker
MARCUS BARTHOLOMEW BOOKER
DEFENDANT/APPLICANT

EXHIBIT A

Letter from John Tatum, Attorney At Law
(On file with the Court of Criminal Appeals)

EXHIBIT B
Applicant's Declaration of Indigency

NO. _____

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

EX PARTE

MARCUS BARTHOLOMEW BOOKER,
Applicant.

*On Application for a Writ of Habeas Corpus
Under Code of Criminal Procedure, Article 11.07
Cause No. F16-52028-U In the 291st Judicial District Court
From Dallas County*

APPLICANT'S DECLARATION OF INDIGENCE

Marcus Bartholomew Booker, Applicant in the above styled and numbered cause, states the following under penalty of perjury:

My name is Marcus Bartholomew Booker. I am Texas prisoner number 2145492. I am over 21 years of age, of sound mind, capable of making this declaration, and personally acquainted with the facts herein stated.

1. I am presently incarcerated in the Correctional Institution Division of the Texas Department of Criminal Justice where I am not permitted to earn or handle money.
2. I have no source of income.
3. I neither own nor have an interest in any realty, stocks, bonds, or bank accounts and I receive no interest or dividend income from any source.
4. I have approximately \$ 0.00 credited to me in my inmate trust fund account.

5. I do not have the financial ability and I cannot give security for a copy of the Clerk's and Reporter's Records in order to raise any ineffective assistance of trial counsel claims in an Application for a Writ of Habeas Corpus Under Code of Criminal Procedure, Article 11.07.

INMATE DECLARATION

I, Marcus Bartholomew Booker, TDCJ No. 2145492, being presently incarcerated in Bowie County, Texas, verify and declare under penalty of perjury that the foregoing is true and correct.

Executed: April 23, 2019

Marcus Bartholomew Booker

MARCUS BARTHOLOMEW BOOKER
DECLARANT/APPLICANT
TDCJ No. 2145492
Barry B. Telford Unit
3899 State Highway 98
New Boston, Texas 75570
Main Phone:(903)628-3171

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