

Appendix

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Appendix "A"

Court of Appeals for the Seventh District of Texas
Memorandum Opinion
February 27, 2019
Appellate No. 07-18-00381-CV



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-18-00381-CV

JOHN ALAN CONROY, APPELLANT

V.

**SHERIFF CLIFF HARRIS, PECOS COUNTY AND THE PECOS COUNTY SHERIFF'S
DEPARTMENT, APPELLEES**

On Appeal from the 99th District Court
Lubbock County, Texas
Trial Court No. 2016-523,428-A, Honorable William C. Sowder, Presiding

April 29, 2019

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

John Alan Conroy (Conroy) (pro se) sued miscellaneous defendants in a civil action on miscellaneous grounds. The suit arose from his arrest for and ultimate federal conviction of possessing child pornography. Several of the defendants were Sheriff Cliff Harris, Pecos County and the Pecos County Sheriff's office (collectively referred to as Pecos). Pecos moved to dismiss the action under Rule 91a of the Texas Rules of Civil Procedure. The trial court granted the motion and dismissed with prejudice. Through

four issues, Conroy now contends that the trial court erred in granting the motion and denying his request for appointed counsel. We affirm.

The first topic we address is the dismissal of his suit against Pecos. The underlying premise of Conroy's suit concerns the existence of exculpatory information and whether withholding it denied him the constitutional right of due process, which denial may be redressed via a civil action. The purported exculpatory evidence consisted of a video taken by Pecos. The video purportedly memorialized Pecos transporting him upon his arrest. Conroy wanted the video and sued Pecos, alleging that withholding it constituted a violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and a denial of his constitutional right to due process.

Again, Pecos moved to dismiss the suit under Rule 91a of the Texas Rules of Civil Procedure. See TEX. R. CIV. P. 91a(1) (stating that a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact). Through its motion, Pecos asserted that Conroy was collaterally estopped from pursuing the action and requested that the trial court take judicial notice of various documents filed in federal actions and various judgments issued by the federal courts entertaining those proceedings. Such courts were located both in and out of Texas.

The trial court at bar convened a hearing on the motion, received into evidence a flash drive containing the aforementioned documents and judgments, and judicially noticed its contents.¹ The hearing eventually resulted in issuance of the dismissal order under attack.

¹ Generally, a court may not consider evidence when deciding whether to dismiss under Rule 91a. TEX. R. CIV. P. 91a(6). Its decision must be based solely on the 1) pleadings and 2) exhibits filed in support of those pleadings per Rule 59 of the Rules of Civil Procedure. TEX. R. CIV. P. 91a(6). Pecos knew of this limitation. Furthermore, the federal documents and judgments which Pecos asked the trial court to notice

Our procedural rules obligate an appellant to bring forward an appellate record sufficient to show error requiring reversal. *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990); *Washer v. City of Borger*, No. 07-16-00413-CV, 2018 Tex. App. LEXIS 5929, at *11 (Tex. App.—Amarillo July 31, 2018, no pet.) (mem. op.); *Nicholson v. Fifth Third Bank*, 226 S.W.3d 581, 583 (Tex. App.—Houston [1st. Dist.] 2007, no pet.). If that record omits evidence admitted by the trial court, then we presume that the omitted evidence supports the trial court's judgment. *Palla v. Bio-One, Inc.*, 424 S.W.3d 722, 727-28 (Tex. App.—Dallas 2014, no pet.) (quoting *In re Estate of Arrendell*, 213 S.W.3d 496, 503 (Tex. App.—Texarkana 2006, no pet.)); accord *Crown Life Ins. Co. v. Gonzalez*, 820 S.W.2d 121, 122 (Tex. 1991) (holding that absent a complete record on appeal, it must presume the omitted depositions supported the trial court's judgment). Additionally, without a complete record, we also conclude that the appellant waived points of error or issues dependent on the state of the evidence. *Washer*, 2018 Tex. App. LEXIS 5929, at *12.

The flash drive tendered by Pecos and accepted by the trial court does not appear within the appellate record. Thus, its contents are also missing from the appellate record. This means that the record is incomplete. Consequently, we presume the missing information supported the trial court's decision to dismiss and conclude that appellant waived his complaint regarding dismissal with prejudice.²

were not part of Conroy's pleadings or exhibits. Nevertheless, it invoked a federal rule of civil procedure to justify its decision to proffer them as part of the Rule 91a motion. The legitimacy of that tactic is not something we need consider since Conroy did not complain about it on appeal.

² To the extent one may wonder why we merely do not take judicial notice of the same federal documents and judgments, the answer is simple. Judicial records from another state and records from a domestic court other than the court being asked to take judicial notice have not been deemed so easily ascertainable that no proof of them is required *Ex parte Wilson*, 224 S.W.3d 860, 863 (Tex. App.—Texarkana 2007, no pet.). So, they must be established by introducing into evidence authenticated or

We also observe that the obligation to disclose exculpatory information under *Brady v. Maryland* may implicate the due process clause of the United States Constitution. *Matthew v. Johnson*, 201 F.3d 353, 360 (5th Cir. 2000). Yet, it has been explained that a *Brady* violation “is defined in terms of the potential effects of undisclosed information on a judge’s or jury’s assessment of guilt.” *Id.* at 361-62. Given that, it has also been held that “the failure of a prosecutor to disclose exculpatory information to an individual waiving his right to trial is not a constitutional violation.” *Id.* Indeed, a guilty plea bars a defendant from urging a *Brady* violation. *United States v. Conroy*, 567 F.3d 174, 178 (5th Cir. 2009). Conroy’s federal conviction arose from his plea of guilty. There was no trial. So, per *Matthew* and *Conroy*, his purported *Brady* claim is nonexistent. In other words, it does not amount to a constitutional violation. Thus, his civil suit to redress a constitutional violation which actually is not a constitutional violation could be said to be groundless per Rule 91a. So, it was subject to dismissal under that Rule.

As for the issue regarding appointed counsel, various statutes require the appointment of counsel in a civil case. We know of none applicable here. Yet, the trial court still has the discretion to appoint counsel if it chooses. But, a refusal to do so is not an abuse of discretion when the indigent party fails to demonstrate why the public and private interests at stake are so exceptional that the administration of justice is served by the appointment. *Fairfax v. Smith*, No. 07-09-0321-CV, 2010 Tex. App. LEXIS 1816, at *2-3 (Tex. App.—Amarillo Mar. 16, 2010, no pet.) (mem. op.). While Conroy suggests

certified copies of them. *Id.*; accord *Laflamme v. State*, No. 04-15-00806-CR, 2017 Tex. App. LEXIS 5393, at *3-4 (Tex. App.—San Antonio June 14, 2017, pet. ref’d) (mem. op., not designated for publication) (holding that a court will take judicial notice of another court’s records if a party provides evidence of the records, such as through proper authentication or certification). Without the certified or authenticated documents and judgments filed with and issued by the federal courts in question (including that from Illinois), we merely cannot judicially notice them.

that his circumstance presents an exceptional case given his imprisonment and supposed lack of access to legal resources like a law library, we disagree. Being an inmate alone is not enough. *Id.* That his appellate brief contains a plethora of citation to legal authority also tends to belie his suggestion he cannot access such authority. And, as said above, his claim against Pecos is groundless given the absence of a constitutional violation. So, we cannot say his circumstances were or are those which make the decision to deny counsel an abuse of discretion.

Accordingly, we affirm the judgment of the trial court.

Brian Quinn
Chief Justice

Campbell, J., concurring in judgment only.

No. 07-18-00381-CV

John Alan Conroy
Appellant§ From the 99th District Court
of Lubbock County

v.

§ April 29, 2019

Sheriff Cliff Harris, Pecos County and
the Pecos County Sheriff's
Department
Appellee§ Opinion by Chief Justice Quinn
§J U D G M E N T

Pursuant to the opinion of the Court dated April 29, 2019, it is ordered, adjudged, and decreed that the judgment of the trial court be affirmed.

Inasmuch as this is an appeal *in forma pauperis*, no costs beyond those that have been paid are adjudged.

It is further ordered that this decision be certified below for observance.

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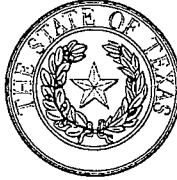
Appendix "B"

Court of Appeals for the Seventh District of Texas

Mandate

November 6, 2019

Appellate No. 07-18-00381-CV



**COURT OF APPEALS
SEVENTH DISTRICT OF TEXAS
AMARILLO**

MANDATE

THE STATE OF TEXAS

To the 99th District Court of Lubbock County, Greeting:

BEFORE our Court of Appeals for the Seventh District of Texas, on April 29, 2019, the cause upon appeal to revise or reverse your judgment between

**John Alan Conroy v. Sheriff Cliff Harris, Pecos County and the Pecos County
Sheriff's Department**

Case Number: 07-18-00381-CV Trial Court Number: 2016-523,428-A

was determined and therein our said Court made its order in these words:

Pursuant to the opinion of the Court dated April 29, 2019, it is ordered, adjudged and decreed that the judgment of the trial court be affirmed.

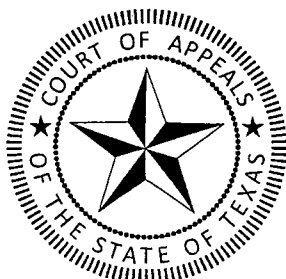
Inasmuch as this is an appeal in forma pauperis, no costs beyond those that have been paid are adjudged.

It is further ordered that this decision be certified below for observance.

o O o

WHEREFORE, WE COMMAND YOU to observe the order of said Court of Appeals for the Seventh District of Texas, in this behalf, and in all things to have it duly recognized, obeyed and executed.

WITNESS, the Honorable Justices of our said Court, with the seal thereof annexed, at the City of Amarillo on November 6, 2019.



Vivian Long
VIVIAN LONG, CLERK

Appendix "C"

99th District Court of Texas
Judgment
Civil No. 2016-523428

CAUSE NO. 2016-523428

JOHN ALAN CONROY
Plaintiff

VS.

DAVID SLOAN; FEDERAL PUBLIC
DEFENDER'S OFFICE, LUBBOCK, TEXAS;
GREGG ABBOTT, GOVERNOR FOR THE
STATE OF TEXAS; KEN PAXTON,
ATTORNEY GENERAL FOR THE
STATE OF TEXAS; STEVEN C. MCGRAW,
DIRPECOS, TEXAS DEPARTMENT OF
PUBLIC SAFETY; SHERIFF CLIFF HARRIS,
PECOS COUNTY; AND PECOS COUNTY
SHERIFF'S DEPARTMENT

Defendants

www.pearsoned.com

IN THE DISTRICT COURT OF

LUBBOCK COUNTY, TEXAS

99TH JUDICIAL DISTRICT

JUDGMENT

On this day, the Court considered the above-captioned cause.

Plaintiff John Alan Conroy's claims against Defendants Sheriff Cliff Harris, Pecos County, and the Pecos County Sheriff's Department (the "Pecos County Defendants") were before the Court on July 23, 2018, on which date, the Court considered the Pecos County Defendants' Rule 91a Motion to Dismiss. The Court now enters its order as to the Pecos County Defendants' motion and enters this final judgment as to all claims brought by Plaintiff John Alan Conroy against the Pecos County Defendants.

After considering the Pecos County Defendants' Rule 91a Motion to Dismiss, the Court is of the opinion that the motion is well taken and should be, in all things, granted. The Court hereby ORDERS that the Pecos Defendants' Rule 91a Motion to Dismiss is GRANTED for each of the reasons raised in the motion.

THEREFORE, the Court ORDERS that Plaintiff John Alan Conroy take nothing as to the Pecos County Defendants. Plaintiff's claims against the Pecos County Defendants are DISMISSED WITH PREJUDICE.

This judgment disposes of all claims brought by Plaintiff John Alan Conroy against the Pecos County Defendants and is final and appealable.

IT IS SO ORDERED

Signed this ____ day of _____, 2018.

JUDGE PRESIDING

APPROVED AS TO FORM:

/s/ R. Layne Rouse
R. LAYNE ROUSE
State Bar No. 24066007
lrouse@shaferfirm.com

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*Attorneys for Defendants Sheriff Cliff Harris,
Pecos County, and the Pecos County Sheriff's Department*

Appendix "D"

Supreme Court of Texas
Denial of Review of Petition
September 20, 2019
Case no. 19-0606



OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

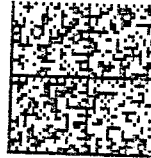
OFFICIAL BUSINESS

STATE OF TEXAS

RE: Case No. 19-0606

COA #: 07-18-00381-CV

STYLE: CONROY V. HARRIS



U.S. POSTAGE >> PITNEY BOWES



DATE: 9/20/2019

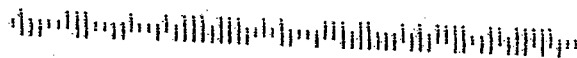
ZIP 78701
TC# 2016-523,428-A
0001396492 SEP. 20. 2019

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case.

6

MAIL TO:

JOHN ALAN CONROY
ID 42054-177
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MARION, IL 62959



Appendix "E"

Judgment Granting an IN CAMERA Review
of the Interrogation Video of July 3, 2010
September 24, 2018

JOHN ALAN CONROY,
Plaintiff,

V.

DAVID SLOAN; FEDERAL PUBLIC
DEFENDER'S OFFICE, LUBBOCK, TEXAS;
GREG ABBOTT, GOVERNOR OF THE
STATE OF TEXAS; KEN PAXTON,
ATTORNEY GENERAL FOR THE STATE OF
TEXAS; STEVEN C. MCCRAW, DIRECTOR,
TEXAS DEPARTMENT OF PUBLIC SAFETY;
SHERIFF CLIFF HARRIS, PECOS
COUNTY; PECOS COUNTY SHERIFF'S
DEPARTMENT,
Defendants.

IN THE DISTRICT COURT OF

LUBBOCK COUNTY, TEXAS

99TH JUDICIAL DISTRICT COURT

JUDGMENT

Before this Court came to be considered on August 21, 2018, Defendant Steven C. McCraw, Director, Texas Department of Public Safety (“DPS”) in his official capacity (“Director McCraw”)’s Plea to the Jurisdiction and Motion to Dismiss pursuant to Texas Rule of Civil Procedure 91a.

The Court has considered the pleadings, briefing and arguments to Defendant McCraw's Plea to the Jurisdiction and Motion to Dismiss.

The Court concludes Defendant's Plea to the Jurisdiction and Motion to Dismiss should be and is DENIED, however the Court orders the Texas Department of Public Safety to provide a copy of the interrogation tape in issue to the Court for an in camera inspection to determine whether the tape should then be provided to the Plaintiff in this cause.

This Judgment is an interlocutory Order.

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