

In The Supreme Court of The United States

JESUS JAIME JIMENEZ,
Petitioner.

V.

LORIE DAVIS, Director, Texas Department
Of Criminal Justice - Correctional Institutional Division
Respondent.

CERTIFICATE OF GOOD FAITH

COMES NOW, Petitioner, Jesus Jaime Jimenez - TDCJ No. 01363409, and makes Certification that his Petition for Rehearing, is presented to this Court in good faith, pursuant to Rule 44. Mr Jimenez, further states the following:

1. This Court entered its judgement denying Petitioner a Writ of Certiorari, on June 22, 2020. Petitioner believes that he presents this Court with adequate grounds to justify the granting of rehearing in this case, and said petition is brought in good faith and not for delay. (Ex. 1)

Furthermore, Petitioner believes, that, based upon the Laws of this Court, and the Facts of this Case, Mr Jimenez is entitled to relief, which has been unjustly denied him. He further believes, that, if the Fifth Circuit Court of Appeals and lower courts, are continually allowed to apply the misinterpretation of 'Lack of Jurisdiction' and 'the rulings in Lackawanna' (532 U.S. 394, 401-04 (2001)), improperly, a number of people will be denied their constitutional right's, to Due Process.

I declare under the penalty of perjury, that, the foregoing is true and correct.
Executed on this 3rd day of July, 2020...

Respectfully submitted,



Jesus Jaime Jimenez
TDCJ No. 01363409

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

June 22, 2020

Scott S. Harris
Clerk of the Court
(202) 479-3011

Mr. Jesus Jaime Jimenez
Prisoner ID 1363409
Darrington Unit
59 Darrington Rd.
Rosharon, TX 77583

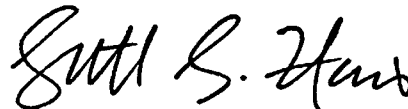
Re: Jesus Jaime Jimenez
v. Lorie Davis, Director, Texas Department of Criminal Justice,
Correctional Institutions Division
No. 19-8280

Dear Mr. Jimenez:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris".

Scott S. Harris, Clerk

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 29, 2020

Ms. Jeannette Clack
Western District of Texas, San Antonio
United States District Court
655 E. Cesar E. Chavez Boulevard
Suite G65
San Antonio, TX 78206

No. 19-50394 Jesus Jimenez v. Lorie Davis, Director
USDC No. 5:19-CV-294

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By:

Melissa V. Mattingly, Deputy Clerk
504-310-7719

cc w/encl:

Mr. Jesus Jaime Jimenez
Mr. Edward Larry Marshall

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50394

JESUS JAIME JIMENEZ,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeals from the United States District Court
for the Western District of Texas

O R D E R:

Jesus Jaime Jimenez, Texas prisoner # 1363409, moves for a certificate of appealability (COA) to challenge the dismissal of his 28 U.S.C. § 2254 petition without prejudice for lack of jurisdiction. His § 2254 petition challenged his 1991 convictions and sentences for burglary, at least one of which was used to enhance the 50-year sentence of imprisonment for engaging in organized criminal activity that he is currently serving. Jimenez argues that the district court erroneously determined that he was not "in custody" pursuant to the burglary convictions, and he contends that he is suffering collateral consequences. He further argues that his § 2254 petition was cognizable in light of his claim of ineffective assistance of counsel. Also, Jimenez moves for permission to proceed in forma pauperis (IFP).

To obtain a COA, Jimenez must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). A petitioner satisfies the *Slack* standard by showing that “jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Even if the district court’s “in custody” determination is debatable, its conclusion that Jimenez may not collaterally challenge his burglary convictions is not. *See Lackawanna Cty. Dist. Attorney v. Coss*, 532 U.S. 394, 401-04 (2001). Therefore, Jimenez’s request for a COA is DENIED. His IFP motion also is DENIED.



A True Copy
Certified order issued Jan 29, 2020

Style W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

/s/ Edith H. Jones
EDITH H. JONES
UNITED STATES CIRCUIT JUDGE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**JESUS JAIME JIMENEZ,
TDCJ No. 01363409,**

Petitioner,

v.

**LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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SA-19-CA-0294-XR

ORDER OF DISMISSAL

Before the Court is Petitioner Jesus Jaime Jimenez's petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 (ECF No. 1) and accompanying Memorandum in Support (ECF No. 2). For the reasons set forth below, Petitioner's federal habeas corpus petition is dismissed without prejudice for lack of jurisdiction. Petitioner is also denied a certificate of appealability.

Analysis

According to his petition and supplemental memorandum, Petitioner was charged by indictment with two counts of burglary alleged to have occurred in Kerr County during February 1991. Petitioner plead guilty in April 1991 to both counts and, pursuant to the plea agreement, was sentence to five years of probation for the first count and ten years of probation for the second count. Because Petitioner has already fully discharged these sentences, however, he is no longer "in custody" pursuant to these convictions.¹ Thus, this court lacks jurisdiction under § 2254 to entertain his challenge. *Maleng v. Cook*, 490 U.S. 485, 492 (1989) ("While we have

¹ Petitioner is currently in the custody of TDCJ, albeit for a separate 2006 conviction for engaging in organized criminal activity that is unrelated to the 1991 burglary convictions. *State v. Jimenez*, No. B06-146 (198th Dist. Ct., Kerr Cnty., Tex. Apr. 7, 2006).

very liberally construed the 'in custody' requirement for purposes of federal habeas, we have never extended it to the situation where a habeas petitioner suffers no present restraint from a conviction."). Even if Petitioner were to challenge another conviction as having been improperly enhanced based upon his 1991 convictions, that effort would likewise be foreclosed by well-settled Supreme Court precedent. *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394, 401 (2001) (holding that attacks on expired convictions, even when used to enhance current sentences, generally do not state a cognizable claim in § 2254 proceedings).

The Supreme Court recognized two exceptions to the foreclosure principle it announced in *Lackawanna*. The first applies to cases in which a criminal defendant was denied the assistance of counsel in violation of the fundamental constitutional principle announced in *Gideon v. Wainwright*, 372 U.S. 335 (1963). *Lackawanna*, 532 U.S. at 404-05. Petitioner does not make such an allegation. The second exception applies in situations in which either (1) some state action prevented the petitioner from raising or obtaining review of a federal constitutional claim or (2) newly discovered evidence (i.e., that which the petitioner could not have uncovered in a timely manner) establishes the defendant is actually innocent of the crime for which he was convicted. *Lackawanna*, 532 U.S. at 405-06. Petitioner makes no such showing in his petition or supporting memorandum.

Conclusion

Rule 4 Governing Habeas Corpus Proceedings states a habeas corpus petition may be summarily dismissed "[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court." Because Petitioner

has not satisfied the preconditions for review set forth by § 2254, dismissal of his petition is warranted.

Accordingly, **IT IS HEREBY ORDERED** that:

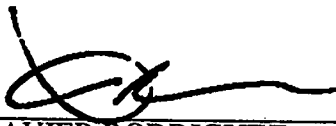
1. Petitioner's § 2254 petition (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction;

2. Petitioner failed to make "a substantial showing of the denial of a federal right" and cannot make a substantial showing that this Court's procedural rulings are incorrect as required by Fed. R. App. P. 22 for a certificate of appealability. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Therefore, this Court **DENIES** Petitioner a certificate of appealability. *See* Rule 11(a) of the Rules Governing § 2254 Proceedings; and

3. All other remaining motions, if any, are **DENIED**, and this case is now **CLOSED**.

It is so ORDERED.

SIGNED this 25th day of March, 2019.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

50/126

CAUSE NO. B91-54

FILED

3:00

Clock

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

Kerr COUNTY, TEXAS

APR 10 1991

LINDA UECKER
District Clerk
Kerr County, Texas

198TH JUDICIAL DISTRICT

JUDGMENT ON A PLEA OF GUILTY OR NOLO CONTENDERE BEFORE COURT CONFINEMENT

JUDGE PRESIDING: EMIL KARL PROHL DATE OF JUDGMENT: 4/16/91
 PROSECUTOR: RON SUTTON 11 DONNIE COLEMAN
 DEFENSE ATTORNEY: Adam Morriss retained
 OFFENSE CONVICTED OF: Burglary of a Habitation APPOINTED, RETAINED
 DEGREE: 1st DATE COMMITTED: February 18, 1991
 CHARGING INSTRUMENT: Indictment/Information PLEA: Guilty/ Nolo Contendere
 TERMS OF PLEA BARGAIN (In Detail): Bastard followed by 5 year probation
ie. TDC Special Shock Probation; 10 yr. deferred probation in #B91-5
#B91-9, #B91-51 & #B91-52 taken into account in B91-53 as unjudicially
offered
 ENHANCEMENT: PLEA N/A FINDINGS: N/A
 FINDINGS ON USE OF DEADLY WEAPON: N/A
 DATE SENTENCE IMPOSED: 4/16/91 DATE TO COMMENCE: February 19, 1991
 COSTS: \$82.50 TIME CREDITED:
 PUNISHMENT & PLACE OF CONFINEMENT: 5 years TDC "Bastard"
 TOTAL RESTITUTION: \$10,953 See #B91-53 REPORTER: Walter Tomlin
 CONCURRENT UNLESS OTHERWISE SPECIFIED.

COURT ORDERED FINE, COST & RESTITUTION PAYABLE IN ACCORDANCE WITH
 THE ORDERS OF THE BOARD OF PARDONS AND PAROLES.

The foregoing "SUMMARY" forms an integral part of this judgment.

On the above shown day, this cause was called. The State of Texas appeared by her Assistant District Attorney. The Defendant appeared in person and by counsel. Having been duly arraigned, the Defendant entered the plea shown to the offense shown above as alleged in the charging instrument. The Defendant having in open Court and in writing waived right of trial by Jury, such waiver was approved by the Court and filed with the papers of this cause. Thereupon the Court admonished the Defendant of the range of punishment attached to the offense and the fact that any recommendation of the prosecuting attorney as to punishment is not binding on the Court. The Court inquired as to the existence of any plea bargaining agreement between the State and the Defendant. The Court was informed that there was a plea bargain agreement and that the Defendant personally agreed to it.

It plainly appearing to the Court that the Defendant was mentally competent and the plea was free and voluntary, the plea shown was received by the Court and is now entered of record. Having heard the plea and having heard the evidence which was submitted, including stipulated evidence under the provisions of Article 1.5, Code of Criminal Procedure, and having duly considered same, the Court informed

CERTIFIED TRUE AND CORRECT COPY

The document to which this certificate is affixed
 containing 2 pages is a full, true and correct
 copy of the original on file and of record in my office.

Attest:

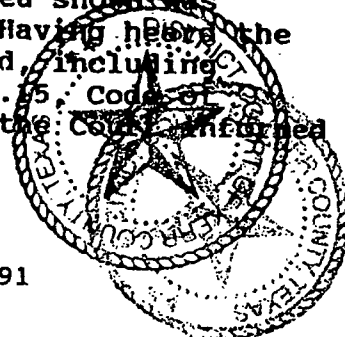
10-30

20-15

CONFINEMENT ROBBIN BURLEW, District Clerk Page 1

Kerr County, Texas

2/11/91



the Defendant it would follow the plea bargain agreement and found the Defendant guilty of the offense shown in the above summary and found the Defendant should be punished by confinement, fine, and restitution as shown.

It is therefore CONSIDERED, ORDERED, and ADJUDGED by the Court that the Defendant is guilty of the offense shown; that the Defendant committed the offense on the date shown above as charged in the charging instrument, and that he be punished, as has been determined by the Court, by confinement, fine, and restitution as shown above.

On this day, this cause again being called, the State appeared by her Assistant District Attorney. The Defendant appeared in person and by his counsel for the purpose of having sentence pronounced. The Court asked the Defendant whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof. Wherefore, the Court proceeded in the presence of the Defendant and his counsel to pronounce sentence against him as follows, with reference being made to the foregoing summary for a specific description of the offense, punishment, place and term of confinement and all other pertinent information:

"It is the ORDER of the Court that the Defendant is so sentenced to serve the term of years shown in the place of confinement shown and to pay any fine and restitution shown. It is further ORDERED by the Court that the State of Texas do have and recover from Defendant all costs of prosecution, for which execution may issue.

The Sheriff of this County, Texas, is directed to deliver Defendant immediately to the Director of the designated place of confinement or other person legally authorized to receive such convicts and Defendant shall be confined in the designated place in the manner and for the years set out above in accordance with the appropriate provisions.

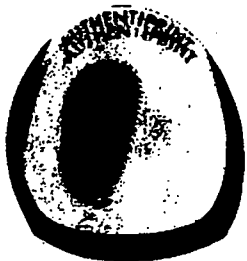
IT IS FURTHER ORDERED that the sentence in this case shall begin and run from the date shown. In accordance with the provisions of Article 42.03, Section 4, in the Texas Code of Criminal Procedure, the Sheriff is directed to attach to the commitment papers a statement showing: (1) the time the Defendant spent in jail; (2) the time the Defendant was placed in custody as of, or after, the pronouncement of sentence; and (3) an assessment of the Defendant's conduct while in jail and/or custody.

The Court advised the Defendant that he had the right to file a Motion in Arrest of Judgment, a Motion for New Trial and a Notice of Appeal.

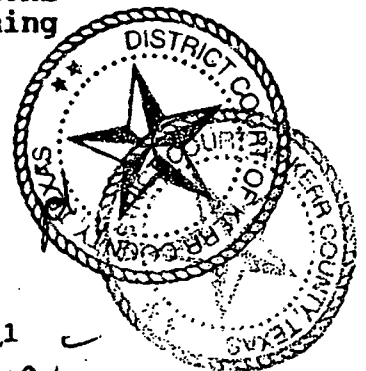
The Defendant hereby is remanded to jail until the directions of this sentence can be obeyed.

SIGNED this the 16 day of April A.D., 1991.

DEFENDANT'S RIGHT
INDEX FINGER:




EMIL KARL PROHL
Judge Presiding



CONFINEMENT

Page 2

2/11/91

c.c. Def - 50 - Author - A. Mous

THE FOREGOING EXHIBITION FORMS AN INTEGRAL PART OF THIS JUDGMENT AND IS HEREAFTER REFERRED TO AS THE "SUMMARY".

ON THIS DAY THIS COURT WAS CALLED (FOR CASE) AND TESTIFIED

APPEARED BY HER ASSIGNED COUNSEL, [NAME], AND DEFENDANT APPEARED IN OPEN COURT IN PERSON AND BY COUNSEL, [NAME]. THE DEFENDANT, [NAME], TRIED. THE DEFENDANT, [NAME], WAS CALLED AND ADDRESSED TO HIS RIGHTS AND OF THE CONSEQUENCES OF AN ADMISSION OF PROBATION IN A CASE

COURT ORDERED FINE, COSTS, RESTITUTION PAYABLE IN ACCORDANCE WITH ATTACHED PROBATION ORDER.

TOTAL, RESTITUTION: \$11,958.44. REIMBURSEMENT

DATE OF ORDER: 07/12/98
FIRM OR OFF OF REPAIRS:

10-11-68

CHANGING INSTRUMENTS, LTD. 1000

APPOINTED/RETAINED

• JAMES PRESIDENT: EARL KYLE, JR. DATE: 10/10/1968

VS.

SECRET

in which adjudication has been deferred, entered the plea shown to the charging instrument. Jury trial was waived by all parties. The Court, having heard the evidence submitted and the arguments of counsel finds that the evidence substantiates the Defendant's guilt of the offense set out in the charging instrument and shown above. However, the Court being of the opinion that the best interests of society and the Defendant will be served by deferring further proceedings without entering an adjudication of guilt pursuant to Article 42.12, Section 1(d), Texas Code of Criminal Procedure, it is therefore CONSIDERED, ORDERED and ADJUDGED that further proceedings in this cause shall be and are hereby deferred and the Defendant is placed on probation in this cause for the term of years shown from date of this judgment under the supervision of the Court and the Adult Probation Officer of this County, subject to the terms and conditions in the Order of Probation attached hereto and made a part of this Order, including the payment of the fine, costs, and restitution.

The Clerk of this Court is directed to furnish Defendant herein a certified copy of this Order as a written statement of the period and terms of Defendant's probation, and to take Defendant's receipt therefor. Upon the successful completion of the Defendant's probation, the Defendant shall be discharged and the proceeding against said Defendant shall be dismissed, except that upon conviction of a subsequent offense, the fact that the Defendant had previously received probation shall be admissible before the Court or Jury to be considered on the issue of penalty.

SIGNED on this the 16 day of April, 1991.

DEFENDANT'S RIGHT
INDEX FINGER:

Emil Kari Froh
EMIL KARI FROH,
Judge Presiding



T. D. C. J. - I N S T I T U T I O N D I V I S I O N
DATE 04/22/20 PERSONNEL SECTION TIME 09:57:39

TDCJID: 01363409 NAME: JIMENEZ, JESUS NAME UNIT DARRINGTON

SENT. BEGIN DATE 06/25/2005 TDC RECEIVED DATE 05/05/2006

INMATE STATUS LINE CLASS I # LAST PCR REQUEST 01/16/20

SENT. OF RECORD	00060	YRS 00 MOS 00 DAYS	MAND SUPV PAROLE
FLAT TIME SERVED	00014	YRS 09 MOS 27 DAYS	024 % 024 %
GOOD TIME EARNED	00014	YRS 09 MOS 27 DAYS	017 % 017 %
WORK TIME EARNED	00000	YRS 00 MOS 00 DAYS	001 % 001 %
MAND SUPV TIME CREDITS	00020	YRS 01 MOS 03 DAYS	042 %
PAROLE TIME CREDITS	00020	YRS 01 MOS 03 DAYS	042 %
MINIMUM EXPIRATION DTE:	08/01/2008		
MAXIMUM EXPIRATION DTE:	11/24/2008		

JAIL GOOD TIME RECD YES
GOOD TIME LOST 00060 DAYS
PAROLE STATUS BPP DATENUMBER OF DETAINERS 00
WORK TIME LOST 00000 DAYS

TDC CALC DATE 04/15/2021

REQUEST
CONDUCT RECORD:

THE STATE OF TEXAS

v.

JESUS JAIME JIMENEZ

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IN THE 198TH JUDICIAL
DISTRICT COURT OF
KERR COUNTY, TEXASJUDGMENT OF CONVICTION BY JURY;
SENTENCE BY JURY TO Institutional Division, TDCJDATE OF JUDGMENT: APRIL 7, 2006JUDGE PRESIDING: EMIL KARL PROHLATTORNEY FOR THE STATE: AMOS BARTONATTORNEY FOR THE DEFENDANT: BOB GALVANOFFENSE: ENGAGING IN ORGANIZED CRIMINAL ACTIVITYSTATUTE FOR OFFENSE: Article 71.02, Section Penal CodeDEGREE OF OFFENSE: First Degree FelonyAPPLICABLE PUNISHMENT RANGE (including
enhancements, if any):

Repeat Offender 15-99 yrs or life/max \$10,000 fine

DATE OF OFFENSE: JUNE 17-28, 2005CHARGING INSTRUMENT: IndictmentPLEA TO OFFENSE: Not GuiltyPLEA TO ENHANCEMENT PARAGRAPH(S): Not ApplicableVERDICT FOR OFFENSE: GuiltyFINDING ON ENHANCEMENT: Not ApplicableAFFIRMATIVE FINDING ON Not ApplicableDEADLY WEAPON: Not ApplicableOTHER AFFIRMATIVE Not ApplicableSPECIAL FINDINGS:DATE SENTENCE IMPOSED: April 7, 2006PUNISHMENT AND PLACE OF CONFINEMENT: 50 years in the Institutional Division-TDCJTIME CREDITED TO SENTENCE: 212 daysCOURT COSTS: \$ 288.00TOTAL AMOUNT OF RESTITUTION: \$ -0-NAME AND ADDRESS FOR RESTITUTION:

DOB: 01-30-73

SS#: 351-62-7143

SID#: TX04444796

This sentence shall run consecutively with cause B91-53.

On the date stated above, the above numbered and entitled cause was regularly reached and called for trial, and the State appeared by the attorney stated above, and the Defendant and the Defendant's attorney, as stated above, were also present. Thereupon both sides announced ready for trial, and the Defendant pleaded not guilty and a jury, to wit: Gina Fenner, and eleven others, was duly selected, impaneled and sworn. Having heard the evidence submitted and having been duly charged by the Court, the jury retired to consider their verdict. Afterward, being brought into open court by the proper officer, the Defendant, the Defendant's attorney, and the State's attorney being present, and being asked if the jury had agreed upon a verdict, the jury answered it had and returned to the Court a verdict, which was read aloud, received by the Court, and is now entered upon the Minutes of the Court as follows:

"We, the jury, find the defendant GUILTY of the offense of Engaging in Organized Criminal Activity, a felony of the first degree, as charged in the indictment."

Thereupon, the Defendant having previously elected to have the punishment assessed by the jury, pleaded to the enhancement paragraphs, if any, as stated above, and the jury was called back into the box and heard evidence related to the question of punishment. Thereafter, the jury retired to consider such question and, after having deliberated, the jury was brought back into open court by the proper officer, the Defendant, the Defendant's attorney, and the State's attorney being present, and being asked if the jury had agreed upon a verdict, the jury

FILED
At 2:30 O'clock PM
APR 7 2006
LINDA UECKER
District Clerk
Kerr County, Texas
By *[Signature]*

presented to the Court a verdict, which was read aloud, received by the Court, and is now entered upon the Minutes of the Court as follows:

We, the jury, having found the defendant, **JESUS JAIME JIMENEZ**, guilty of the felony offense of Engaging in Organized Criminal Activity, do further find that the said defendant is the same person who, prior to the commission of that offense, had been convicted of the felony offense of Burglary of a Habitation in cause No. B91-54 as alleged in the indictment, and we assess his punishment at confinement in the Institutional Division of the Texas Dept. of Criminal Justice for **50 years**

A presentence investigation report was not required or done.


And thereupon the Court asked the Defendant whether the Defendant had anything to say why said sentence should not be pronounced upon said Defendant, and the Defendant answered nothing in bar thereof. Whereupon the Court proceeded to pronounce sentence upon said Defendant as stated above.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the defendant is guilty of the offense stated above, the punishment is fixed as stated above, and the State of Texas do have and recover of said defendant all court costs in this prosecution expended, for which execution will issue.

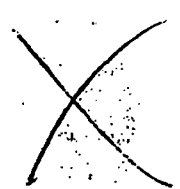
It is ORDERED by the Court that the Defendant be taken by the authorized agent of the State of Texas or by the Sheriff of this county and be safely conveyed and delivered to the Director, Institutional Division-TDCJ, there to be confined in the manner and for the period aforesaid, and the said defendant is hereby remanded to the custody of the Sheriff of this county until such time as the Sheriff can obey the directions of this sentence.

The defendant is given credit as stated above on this sentence for the time spent in county jail. The Defendant also is ordered to pay restitution to the person(s) named above in the amount specified above.

Signed on the 7th day of April, 2006.


EMIL KARL PROHL, JUDGE PRESIDING

Defendant's right thumbprint



(b) When a court requests suspension of the execution of a sentence or when requested by the defendant, the court shall cause a copy of the defendant's record to be forwarded from the court to the jail where the defendant is incarcerated. The court shall also cause a full and complete copy of the defendant's record to be forwarded to the Texas Department of Corrections.

(c) The court may deny the motion without a hearing but may not grant a motion without holding a hearing and allowing the attorney representing the state and the defendant to present evidence in the case.

Alternative Incarceration Probation

Sec. 8. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring commitment in the Texas Department of Corrections is imposed for conviction of a felony shall continue for 90 days from the date the execution of the sentence actually begins. After the expiration of 90 days but prior to the expiration of 90 days from the date the execution of the sentence actually begins, the judge of the court that imposed the sentence may suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further incarceration in a penitentiary. The court shall clearly indicate in its order placing the defendant on probation under this section that the court is not retaining jurisdiction over the defendant for the purposes of Section 5 of this article. Probation may be granted under this section only if:

- (1) the defendant is otherwise eligible for probation under this article;
- (2) the defendant is a male 17 years of age or older but younger than 26 years and does not have a physical or mental handicap that precludes strenuous physical activity; and
- (3) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony.

(b) On the date the execution of a sentence begins for a defendant placed on probation under this section, the probationer shall begin participation in a program in the Texas Department of Corrections under Article 6208c-9, Revised Statutes.

(c) If a court requests of the Texas Department of Corrections the record of a defendant placed on probation under this section, the department shall promptly send the record to the court.

Presentence Investigations

Sec. 9. (a) Except as provided by Subsection (b) of this section, prior to the imposition of sentence by the court in a criminal case, the court shall direct a probation officer to report to the court in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate the victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the court. If it is determined that the report contains inadequate information, but the report and information department would be of assistance in the defendant's case, the court may

(b) The court may, at its discretion, direct the probation officer to prepare a report on the defendant's case, including information on the defendant's family, education, and employment history, and the court may

(c) The court may, at its discretion, direct the probation officer to prepare a report on the defendant's case, including information on the defendant's family, education, and employment history, and the court may

(d) The court may, at its discretion, direct the probation officer to prepare a report on the defendant's case, including information on the defendant's family, education, and employment history, and the court may

(e) The court may, at its discretion, direct the probation officer to prepare a report on the defendant's case, including information on the defendant's family, education, and employment history, and the court may

Bootcamp

91st day

CODE OF CRIMINAL PROCEDURE

(d) Before sentencing a defendant, the court shall permit the defendant to read the presentence report.

(e) The court shall allow the defendant or his attorney to examine the report with the approval of the court, introduce testimony or other information, and file a motion for inaccuracy in the report.

(f) The court shall allow the attorney representing the defendant to examine the report made available to the defendant under this section.

(g) The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed.

(h) On a determination by the court that alcohol or drug abuse may have contributed to the commission of the offense, the court shall direct a probation officer approved by the probation department or the court or a person, program, or other agency approved by the Texas Commission on Alcohol and Drug Abuse, to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report that evaluation to the court. The evaluation shall be made:

(1) after arrest and before conviction, if requested by the defendant;

(2) after conviction and before sentencing, if the court assesses punishment in the case;

(3) after sentencing and before the entry of a final judgment if the jury assesses punishment in the case; or

(4) after probation is granted, if the evaluation is required as a condition of probation under Section 13 of this article.

(i) A presentence investigation shall be conducted on any offender convicted of a felony offense if it appears to the court through its own observation or on suggestion of a party that the defendant may have a mental impairment. The presentence investigation shall include a psychological evaluation which determines, at a minimum, the defendant's IQ and adaptive behavior score. The results of the evaluation shall be included in the report to the court as required by Subsection (a) of this section.

(j) The court by order may direct that any information and records that are not privileged and that are relevant to the report required by Subsection (a) of this section be released to the officer conducting the presentence investigation under Subsection (i) of this section. The court may also issue a subpoena to obtain that information. The report and all information obtained in connection with the presentence investigation are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the court for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant's probation file and may be released only by order of the court.

¹References to "probation department" or "adult probation department" shall mean a community supervision and corrections department by Acts 1989, 71st Leg., ch. 785, § 1.20(h).

Authority to Impose, Modify, or Revoke Probation

*Text of § 10 as relettered from § 5 and amended by Acts 1988,
71st Leg., ch. 785, § 4.17*

Sec. 10. (a) Only the court in which the defendant was tried may grant probation, impose conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. Except as provided by Subsection (d) of this section, only the court may alter conditions of probation. In a felony case, only the judge who originally sentenced the defendant may suspend execution thereof and place the defendant under probation pursuant to Section 6 of this article except that if the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and a motion is filed in accordance with Section 6 of this article, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court, who may deny the motion without a hearing or appoint a judge to hold a hearing on the motion.

(b) After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this State having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs.

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any crime or offense, where the maximum punishment assessed for the offense does not exceed ten years imprisonment, to suspend the punishment and the court may place the defendant on probation or suspend the punishment for the offense committed and also place the defendant on probation or suspend the punishment otherwise provided by this section, in all felony cases. The punishment assessed by the Court it may fix the period of probation without regard to the punishment assessed, but in no event may the period of probation be less than the minimum prescribed for the offense for which the defendant is convicted. In a misdemeanor case in which confinement is imposed by the court or in a felony case punished under Section 12.04(a)(2), Penal Code, the period of probation shall be for a period of time not to exceed the maximum confinement applicable to the offense or two years, whichever period is greater. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court. Secs. 3a to 3f. [Blank]

Limitation on Court Ordered Probation

Sec. 3g. (a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

- (A) Section 19.03 (Capital murder);
- (B) Section 20.04 (Aggravated kidnapping);
- (C) Section 22.021 (Aggravated sexual assault);
- (D) Section 29.03 (Aggravated robbery); or

(2) to a defendant when it is shown that the defendant used or exhibited a deadly weapon as defined in Section 1.07(a)(1), Penal Code, during the commission of a felony offense or during immediate flight therefrom. Upon affirmative finding that the defendant used or exhibited a deadly weapon during the commission of an offense or during immediate flight therefrom, the trial court shall enter the finding in the judgment of the court. Upon an affirmative finding that the deadly weapon the defendant used or exhibited was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding that the defendant convicted of a felony of the second degree or higher used or exhibited a firearm during the commission or flight from commission of the offense and the defendant is granted probation, the court may order the defendant confined in the Texas Department of Corrections¹ for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the Department of Corrections, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The Department of Corrections shall release the defendant to probation after he has served 120 days.

¹References to the Texas Department of Corrections shall mean the institutional division of the Texas Department of Criminal Justice by Acts 1989, 71st Leg., ch. 785, § 1.1(b).

Jury Recommended Probation

Sec. 4a. (a) When there is a felony conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict, that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court if the jury recommends it in their verdict, for the period recommended by the jury. This section does not apply to a defendant adjudged guilty of an offense under Section 12.04(a)(2), Penal

(Controlled Substance Identification and Safety Code), if it is shown on the label of the product, and the age of the person or persons of age or older at the time of the offense.

any court of this state and the defendant is not imprisoned in jail or by a fine or by probation for a period of time as provided by the defendant, filed before the penalty stage of the trial. When the jury recommends probation, it may recommend that the imprisonment or fine or both the fine and imprisonment found in its verdict may be probated. When the trial is a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

(c) This section does not prohibit a court from granting probation in a case if the jury in the case does not recommend probation.

Deferred Adjudication

Sec. 5. (a) Except as provided by Subsection (d) of this section, when in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation. The court shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of probation. If the information is provided orally, the court must record and maintain the court's statement to the defendant. In a felony case, the period of probation may not exceed 10 years. In a misdemeanor case, the period of probation may not exceed two years. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 24 of this Article. The defendant is entitled to a hearing limited to the determination by the court of whether the proceeds with an adjunction of trial on the original charge. No appeal may be taken from this determination. After an adjunction of trial, all proceedings, including sentencing or punishment, are to be conducted in the original court of jurisdiction. The defendant is deemed to have waived any right to a separate hearing on the condition of probation.

[illegible]

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that the defendant previously has received probation, and that the court is not renewing, denying, or revoking a license under the provisions of this section.

(d) This section does not apply to a defendant who is convicted of an offense under Subsection (a), Section 19.05, Penal Code, or an offense under the Texas Controlled Substances Act (Article 4701b, Vernon's Texas Statutes), an offense listed in Section 4.012(b) of that Act, an offense under the Texas Statutes, an offense under Section 34, Chapter 198, Act of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), an offense under Section 32(e), Texas Motor Vehicle Safety Responsibility Act (Article 6701b, Vernon's Texas Statutes), or an offense under Section 10, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).

Continuing Court Jurisdiction in Felony Cases

Sec. 6. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring confinement in the Texas Department of Corrections is imposed shall continue for 180 days from the date the execution of the sentence actually begins. Before the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on probation under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further incarceration and:

- (1) the defendant is otherwise eligible for probation under this article;
- (2) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony; and
- (3) the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 35.10, Penal Code.

(b) If a court imposes a sentence under Section 12.34(a)(2), Penal Code, the period of time during which the court may suspend further execution of the sentence and place the defendant on probation runs from the 60th day after the date of sentencing until the date the sentence expires.

(c) When the defendant or the attorney representing the state files a written motion requesting suspension by the court of further execution of the sentence and placement of the defendant on probation, and when requested to do so by the court, the clerk of the court shall request a copy of the defendant's record while incarcerated from the Texas Department of Corrections or, if the defendant is incarcerated in county jail, from the sheriff. Upon receipt of such request, the Texas Department of Corrections or the sheriff shall forward to the court, as soon as possible, a full and complete copy of the defendant's record while incarcerated. When the defendant files a written motion requesting suspension of further execution of the sentence and placement on probation, he shall immediately deliver or cause to be delivered a true and correct copy of the motion to the office of the attorney representing the state.

(d) The court may deny the motion without a hearing but may not grant the motion without holding a hearing and providing the attorney representing the state and the defendant the opportunity to present evidence on the motion.

Continuing Court Jurisdiction in Misdemeanor Cases

Sec. 7. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for a period equal to the sentence imposed. The judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant suspend further execution of the sentence and place the defendant on probation under the terms and conditions of this article, if prior to the execution of that sentence the defendant had never been incarcerated in a penitentiary or jail serving a sentence for a felony or misdemeanor, and in the opinion of the judge the defendant would not benefit from further incarceration.

Deferred
adjudication →
from April 91
to Nov. 791
that's 7 months