

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

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

June 22, 2020

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

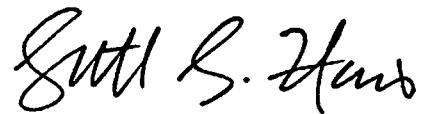
Re: Jesus Jaime Jimenez
v. Lorie Davis, Director, Texas Department of Criminal Justice,
Correctional Institutions Division
No. 19-8280

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,



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. Chávez 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

1. 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.



/s/ Edith H. Jones

EDITH H. JONES
UNITED STATES CIRCUIT JUDGE

A True Copy
Certified order issued Jan 29, 2020

Jyl W. Caylor
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JESUS JAIME JIMENEZ,
TDCJ No. 01363409.

Petitioner,

V.

SA-19-CA-0294-XR

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

Respondent.

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. 691-54

FILED

3:00

APR 16 1991

LINDA UECKER
District Clerk
Kerr County, Texas

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

Kerr COUNTY, TEXAS

Jessica Jeanne Green

198TH JUDICIAL DISTRICT

Opie R. DavisJUDGMENT ON A PLEA OF GUILTY OR NOLO CONTENDERE BEFORE COURT CONFINEMENTJUDGE PRESIDING: EMIL KARL PROHL DATE OF JUDGMENT: 4/16/91

PROSECUTOR: RON SUTTON / DONNIE COLEMAN

DEFENSE ATTORNEY: Adam Moroso

APPOINTED, RETAINED

OFFENSE CONVICTED OF: Burglary of a HabitationDEGREE: 1stDATE COMMITTED: February 18, 1991

CHARGING INSTRUMENT: Indictment/Information PLEA: Guilty/ Nolo Contendere

TERMS OF PLEA BARGAIN (In Detail): Probation followed by 5 year probation
i.e. TDC Special Shock Probation, 10 yr. deferred probation in #691-5
#FB91-9 #691-51 & #691-52 taken into account & #691-53 as unjudic平ENHANCEMENT: PLEA N/AFINDINGS: N/AFINDINGS ON USE OF DEADLY WEAPON: N/ADATE SENTENCE IMPOSED: 4/16/91DATE TO COMMENCE: February 19, 1991COSTS: \$82.50

TIME CREDITED:

PUNISHMENT & PLACE OF CONFINEMENT: 5 years T.D.C. "Best Care"TOTAL RESTITUTION: \$10,953 See St-4 REPORTER: Buster 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 1.15, 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: 10-30-91 ROBBIN BURLEW, District Clerk
CONFINEMENT ROBBIN BURLEW, District Clerk
Kerr County, Texas Page 1

2/11/91

By Opie R. Davis

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.

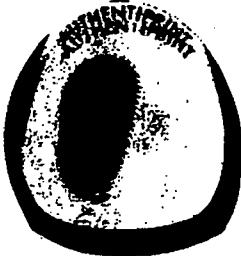
IT IS FURTHER ORDERED that the sentence in this case shall begin and run from the date shown. In accordance with the provisions of Article 42.03, Section 4, in the Texas Code of Criminal Procedure, the Sheriff is directed to attach to the commitment papers a statement showing: (1) the time the Defendant 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.

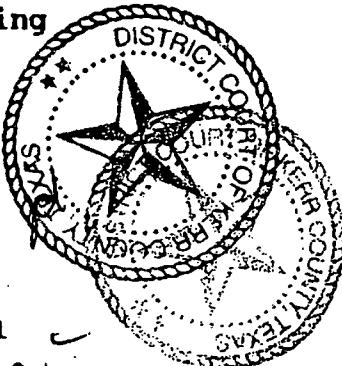
The Defendant hereby is remanded to jail until the directions of this sentence can be obeyed.

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

DEFENDANT'S RIGHT
INDEX FINGER:



Emil Karl Prohl
EMIL KARL PROHL
Judge Presiding



CONFINEMENT

Page 2

2/11/91

cc: Def So Motion A. monroe

4-17-91

1201-NDJ

rights and of the consequences of his action, in a case
trial. The defendant has been denied a trial and a motion for this
appeal court in person and his attorney has been denied a trial and a motion for this
appealed by the defendant. The attorney has been denied a trial and a motion for this
on this day. The court has ruled (as follows) and the state
hereinafter referred to as the court of justice and the judge and is
the foregoing conclusion of the trial of the state of this
ATTACHED PROOF OF COSTS - IN ACCORDANCE WITH
CERTAIN ORDERS FILED, COSTS - INSTITUTION PAYABLE IN ACCORDANCE WITH

9
Mr. /C/ VARIOUS PLACES AND INSTITUTION OF
ADMINISTRATION OF COURT DETERMINED DETERMINATION OF INSTITUTION OF

TRIAL, INSTITUTIONS AS DETERMINED BY THE COURT
TRIAL, INSTITUTIONS AS DETERMINED BY THE COURT

DATE OF ORDERS 2/1/1961 COSTS

PRIMING ON USE OF RADIOGRAPHIC

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 thereof. 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, 1971.

Judge Presiding
RMH, RAMI, PROB.
Judge Presiding

DEFENDANT'S RIGHT
INDEX FINGER:



Def. -
4-17-71 pd
at this -
17. -
P.W.B -

T. D. C. J. -

INSTITUTION

DIVISION

DATE 04/22/20

PERSONNEL

TIME 09:57:39

TDCJID: 01363409 NAME: JIMENEZ, JESUS

UNIT DARRINGTON

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

INMATE STATUS LINE CLASS I

LAST PCR REQUEST 01/16/20

SENT. OF RECORD	00060	YRS 00	MOS 00	DAYS 00	MAND SUPV	PAROLE
FLAT TIME SERVED	00014	YRS 09	MOS 10	DAYS 27	024	% 024
GOOD TIME EARNED	00017	YRS 04	MOS 03	DAYS 21	017	% 017
WORK TIME EARNED	00000	YRS 00	MOS 00	DAYS 00	001	% 001
MAND SUPV TIME CREDITS	00026	YRS 01	MOS 03	DAYS 13	042	%
PAROLE TIME CREDITS	00021	YRS 01	MOS 03	DAYS 03	042	%
MINIMUM EXPIRATION DTE:	08/07/2028					
MAXIMUM EXPIRATION DTE:	11/24/2031					

JAIL GOOD TIME RECD YES

NUMBER OF DETAINERS 00

GOOD TIME LOST 00060 DAYS

WORK TIME LOST 00000 DAYS

PAROLE STATUS BPP DATE

TDC CALC DATE 04/15/2021

REQUEST

CONDUCT RECORD:

THE STATE OF TEXAS

v.

JESUS JAIME JIMENEZ

S IN THE 198TH JUDICIAL
S DISTRICT COURT OF
S KERR COUNTY, TEXASJUDGMENT OF CONVICTION BY JURY;
SENTENCE BY JURY TO Institutional Division, TDCJ

DATE OF JUDGMENT: APRIL 7, 2006

JUDGE PRESIDING: EMIL KARL PROHL

ATTORNEY FOR THE STATE: AMOS BARTON

ATTORNEY FOR THE DEFENDANT: BOB GALVAN

OFFENSE: ENGAGING IN ORGANIZED CRIMINAL ACTIVITY

STATUTE FOR OFFENSE: Article 71.02, Section Penal Code

DEGREE OF OFFENSE: First Degree Felony

APPLICABLE PUNISHMENT RANGE (including
enhancements, if any):

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

DATE OF OFFENSE: JUNE 17-28, 2005

FILED

Indictment

At 2:30 O'clock

PLEA TO OFFENSE: Not Guilty

APR 7 2006

CHARGING INSTRUMENT: Not Applicable

LINDA UECKER

PLEA TO ENHANCEMENT PARAGRAPH(S): Guilty

District Clerk

VERDICT FOR OFFENSE: Not Applicable

Kerr County, Texas

FINDING ON ENHANCEMENT: Not Applicable

By

AFFIRMATIVE FINDING ON

DEADLY WEAPON: Not Applicable

OTHER AFFIRMATIVE

SPECIAL FINDINGS: Not Applicable

DATE SENTENCE IMPOSED: April 7, 2006

50 years in the Institutional Division-TDCJ

PUNISHMENT AND PLACE OF CONFINEMENT: 212 days

TIME CREDITED TO SENTENCE:

\$ 288.00 \$ -0- Alty. fees

COURT COSTS:

\$

TOTAL AMOUNT OF RESTITUTION:

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

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. 891-54 as alleged in the indictment, and we assess his punishment at 50 years confinement in the Institutional Division of the Texas Dept. of Criminal Justice for

A presentence investigation report was not required or done.

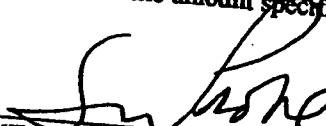
And thereupon the Court asked the Defendant whether the Defendant had anything to say why said sentence should not be pronounced upon said Defendant, and the Defendant answered nothing in bar thereof. Whereupon the Court proceeded to pronounce sentence upon said Defendant as stated above.

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.

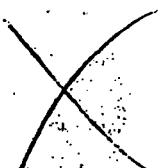
It is ORDERED by the Court that the Defendant be taken by the authorized agent of the State of Texas or by the Sheriff of this county and be safely conveyed and delivered to the Director, Institutional Division-TDCJ, there to be confined in the manner and for the period aforesaid, and the said defendant 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



(c) The court may issue an order suspending execution of a sentence, or any part of a sentence, when requested by the defendant or the defendant's attorney. The court may issue an order suspending the defendant's sentence if the defendant is incapable of committing the offense or if the defendant is in jail where the defendant is unable to afford bail and complete confinement.

(d) The court may issue an order suspending execution of a sentence, or any part of a sentence, holding a hearing and giving the attorney representing the state and the defendant an opportunity to present evidence in the case.

BootCamp
91st day

Article 49.10. Incarceration Probation

Sec. 1. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring confinement in the state or county prison or corrections is imposed on conviction of a felony or a state or county offense, from the date the execution of the sentence begins, is referred to as the probationary period of the defendant. To the jurisdiction of the court in which the sentence begins, the judge of the court may mix a sentence of probation and a sentence of the 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 6 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 5208-9, 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.

Probation Investigation

Sec. 2. (a) Except as provided in 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 the defendant in writing to the nature and values of the offense with which the defendant is charged, the amount of punishment imposed, and to adequately communicate information relating to the defendant's family, social, and economic status, and to make aware the defendant of the rights and responsibilities expressed by the court in the sentence and the conditions of probation. The probation officer shall make a written report to the court concerning the defendant's family, social, and economic status, and the defendant's ability to meet the conditions of probation.

(b) If the court imposes a sentence of probation, the probation officer shall make a written report to the court concerning the defendant's family, social, and economic status, and the defendant's ability to meet the conditions of probation.

(c) If the court imposes a sentence of probation, the probation officer shall make a written report to the court concerning the defendant's family, social, and economic status, and the defendant's ability to meet the conditions of probation.

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 comment on and, with the approval of the court, introduce testimony that contradicts the inaccuracy in the report.

(f) The court shall allow the attorney representing the defendant to make available to the defendant under this section any information made available to the defendant under this section.

(g) The probation officer making a report under this section shall furnish a 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 employed by the probation department of the court or a person, probation or other agent, employed 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 18 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 (h) 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.

¹ References to "probation department" or "adult probation department" shall mean a community supervision and corrections department by Act 1989, 71st Leg., ch. 785 (1.2001).

Authority to Impose, Modify, or Revoke Probation

Text of § 10 as relettered from § 5 and amended by Act 1990 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. In the case 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 hereof 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, incapacitated, or if the office is vacant and a motion is filed in accordance with Section 5 of this article, the judge of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial circuit in that county 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 court in this state having jurisdiction over the defendant if a judge of that court revokes or alters the violation of the conditions of probation because

1964 - 1965 - party: Johnson - (Cr. And.)

He stated he had not been tried in Illinois and that his mother, parolee's mother, had been to Illinois for探视 him and to support hearing on his release. He stated he had been released to Illinois following an arrest for public indecency in a public place. He

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Formal extradition proceedings are not necessary to return to another state of abounding fugitives or probationers who have signed a private waiver of extradition as a condition of their release. *Ex parte Johnson* (Cr. App. 1930) 619 S.W.2d 757.

Art. 42.111. Deferral of proceedings in cases appealed to county court

If a defendant convicted of a misdemeanor punishable by fine only, other than a misdemeanor disposed of by Section 145A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), appeals the conviction to a county court on the trial in county court the defendant may enter a plea of guilty or nolo contendere to the offense. If the defendant enters a plea of guilty or nolo contendere, the court may defer further proceedings without entering an adjudication of guilt in the same manner as provided for the deferral of proceedings in justice court or municipal court under Article 15.54 of this code.

Added by Act 1989, 71st Leg., ch. 899, § 2, eff. Jan. 1, 1990.

Group References

Traffic offense convictions, reports, see *Vermon's Att'y Gen. St. 1975*.

ATL 42-12 Adult P-1

Purpose

Sec. 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence, probationers, in consequence, shall be suspended, the conditions of probation, and the supervision of probation as provided by the Constitution of Texas. It is the purpose of this Article to remove from existing statutes the limitation upon the questions of constitutionality that have acted as barriers to effective criminal protection to the public interest.

ANSWER

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CODE OF CRIMINAL PROCEDURE

any crime or offense, where the maximum punishment does not exceed ten years imprisonment, the court may place the defendant on probation of the offense committed and also place the defendant on probation as otherwise provided by this section, in all felony cases, by the Court it may fix the period of probation, which shall not be less than the period of confinement assessed, but in no event may the period of probation be less than the minimum prescribed for the offense for which the defendant was convicted. In all misdemeanor cases in which confinement is imposed as a punishment for a felony case punished under Section 12.34(a)(2), Penal Code, the period of probation may be for a period of time not to exceed the maximum confinement for the offense, but not to exceed two years, whichever period is greater. Any such person placed on probation in a trial by jury or before the court, shall be under the supervision of such judge. 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)(11), 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.

¹ References to the Texas Department of Corrections shall mean the institutions division of the Texas Department of Criminal Justice by Act 1889, 71st Leg., ch. 78, § 1, 1977.

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 a written 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 attorney, the court shall inform the defendant of his right to make such motion and the court shall allow counsel to prepare and present same if desired by the defendant. The same provisions may be recommended by the jury except when the court makes the trial non-jury, and the jury shall then make their verdict that defendant is guilty of the offense convicted of a felony in this or any other State. This section does not apply to the defendant's jury from passing on the sentence of the defendant, but the court may make such recommendations to the court as it deems appropriate. In all cases, the court may make such recommendations to the court as it deems appropriate.

ARTICLE 10. CRIMINAL PROCEDURE

Sec. 19. (a) If the defendant is found guilty of a felony (as defined in the Penal Code), if it is shown that he is likely to commit another offense or to violate the law or order at the time of his release, the court of this state and the county in which he is found guilty may sentence him to imprisonment in jail or by a fine or by probation, or both, for a period of one year or less, or may sentence him to probation by the defendant, filed before the trial, for a period of one year or less. If the defendant is sentenced to probation, it may require him to pay a fine or to serve time and imprisonment found in the probation order. If the defendant is sentenced to probation 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 represent the defendant, 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 affidavit 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 written 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 filed and the deferral of adjudication filed within 30 days after entering such plea and the deferral 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 may be prosecuted in Section 24 of this Article. The defendant is entitled to a hearing before the court to determine, by the court or the defendant, whether or not the defendant violated the conditions of probation. The court may determine that the defendant violated the conditions of probation and may impose any reasonable terms and conditions of probation. The court may proceed to final adjudication if the defendant fails to appear in court to answer the charges of violation of probation.

(c) The court may, in its discretion, grant a deferral of adjudication in any case where the defendant has been found guilty of a felony or a misdemeanor, if the court determines that the defendant is likely to commit another offense or to violate the law or order at the time of his release.

CODE OF CRIMINAL PROCEDURE

that the defendant previously has received a license to operate a motor vehicle, renewing, denying, or revoking a license under Article 6711, Revised Statutes.

(d) This section does not apply to an offense under Section 48.01, Penal Code, Subsection (2), Subsection (a), Section 19.05, Penal Code, or an offense under the Texas Controlled Substances Act (Article 481, Revised Statutes), or an offense listed in Section 40.12(b) of that Act, or an offense under the Texas Motor Vehicle Safety Responsibility Act (Article 6687b, Revised Statutes), an offense under Section 41, Chapter 101, Article 6687b-1, Revised Statutes, or an offense under Section 10, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).

Deferred
adjudication →
from April 9
to July 9
this 7 months

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, or 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 38.10, 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 to 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 penitentiary or 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, or 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. Prior to the execution of that sentence, the defendant had never been incarcerated in a penitentiary or serving a sentence for a felony, or had not been incarcerated in the county of the judge the defendant would not benefit from further incarceration.