

No. _____

In The

Supreme Court of The United States

In re

Allen "F" Calton

Petitioner's Affidavit Appendix In Support Of His Petition

To The Honorable Court:

Now Comes Allen "F" Calton, the Pro Se Petitioner, in the above cause pursuant to 28 U.S.C. § 1746 and presents his Affidavit Appendix as a self-contained document numbered sequentially. But asks this Court that the same be incorporated and considered with the Writ of mandamus on file herein for all intents, purposes and as support thereof in light of the competent evidence contained herein. I state and depose that I am over (21) years of age, of sound mind and capable of making this affidavit and have personal knowledge that the (72) pages of documents contained as exhibits attached and incorporated hereto are true and correct copies of the originals and I can testify to the same as being the truth of the matter.

(1) Appendix "A" Is a true and correct copy of the Judgment of the Texas Court of Criminal Appeals denying Allen "F" Calton relief on his state Application For writ of Habeas Corpus on 7-12-17 in reference to cause No. WR-65,590-22 app. p.1

Petitioner's Affidavit Appendix Index page 1

(2) Appendix "B" Is a true and correct copy of the judgment of the Texas Court of Criminal Appeals denying Allen "F" Calton relief on his 'motion for reconsideration' on the Texas Court Criminal Appeals own motion of their decision denying habeas corpus relief dated 3-12-20 in reference to Cause No. WR-65,590-22 app. p. 2

(3) Appendix "C" Is a true and correct copy of the statutory Law of Texas Code of Criminal Procedure Article 11.02 app. p. 3-6.

(4) Appendix "D" Is a true and correct copy of the judgment sheet of Cause No. 0843168 for Allen "F" Calton conviction of Attempted murder app. p. 7-8

(5) Appendix "E" Is a true and correct copy of the abuse of writ order entered against Allen "F" Calton by the Texas Court of Criminal Appeals on 5-28-08 app. p. 9-10

(6) Appendix "F" Is a true and correct copy of the judgment of the Texas Court of Criminal Appeals dismissing Allen "F" Calton Petition For writ of Habeas Corpus Presented original to the court dated 1-29-20 Cause No. 65,590-21 app. p. 11.

(7) Appendix "G" Is a true and correct copy of the judgment of the Texas Court of Criminal Appeals denying Allen "F" Calton leave to file An Original Jurisdiction petition For writ of Habeas Corpus date 4-29-20 Cause No. WR-65,590-28 app. p. 12

(8) Appendix "H" Is a true and correct copy of the U.S. Court of Appeals Fifth Circuit's judgment dated 11-26-19 denying Allen "F" Calton leave to file a second or successive Petition Cause No. 19-11206 app. p. 13-14

Petitioner's Affidavit Appendix Index p. ii

- (9) Appendix "I" Is a true and correct copy of the Application For writ of Habeas Corpus Allen "F" Calton filed in the trial Court on 5-26-17 denied by the Texas Court of Criminal Appeals on 7-12-17 Cause No. WR-65,590-22 app. p. 15-36.
- (10) Appendix "J" Is a true and correct copy of the Tarrant County District Attorney office response dated 6-5-17 responding to Allen "F" Calton's T.C.C.P. Art 11.07 application for writ of Habeas Corpus in Cause No. WR-65,590-22 app. p. 37-42.
- (11) Appendix "K" Is a true and correct copy of the 213th Judicial Trial Court's order establishing that Allen "F" Calton had been previously cited for abuse of the writ in the past and directing the district clerk to forward the writ transcript to the Texas Court of Criminal Appeals dated 6-13-17 app. p. 4/3.
- (12) Appendix "L" Is a true and correct copy of the motion for reconsideration on its own motion for the Texas Court of Criminal Appeals to reconsider its denial of Allen "F" Calton's Application For writ of Habeas Corpus filed on 2-7-20 Cause No. WR-65,590-22 app. p. 44-65.
- (13) Appendix "M" Is a true and correct copy of the Demand Letter dated 5-25-20 from Allen "F" Calton demanding the Texas Court of Criminal Appeals and the judges thereof to rescind the court and/or their order denying Calton habeas Corpus relief in Cause No. WR-65,590-22 app. p. 66-72.

Certification

I, Allen "F" Calton #1123880, incarcerated at the Connally Unit,

petitioner's Affidavit Appendix Index page iii

in Karnes County, TX. hereby state under the penalty of perjury that the documents attached and incorporated hereto are true and correct copies of the originals and I have personal knowledge of the same. This court can take judicial notice of said documents contained herein because the same in the public records and/or are from a source whose accuracy cannot be reasonably questioned. See Langdale v Villanil 813 SW2d 187, 189-90 (Tex. App. Houston [14th Dist.] 1991) ("Taking judicial notice of judgment of disbarment because the judgment is a matter of public records and such it is capable of accurate and ready determination by resort to a source whose accuracy cannot be reasonably questioned")

Executed on July 13, 2020 Allen "F" Calton

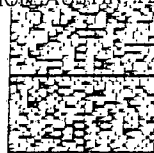
Respectfully Submitted,

Allen "F" Calton

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CALTON, ALLEN FITZGERALD Tr. Ct. No. C-213-011065-0843168-M WR-
65,590-22

This is to advise that the Court has denied without written order the application for writ of habeas corpus.

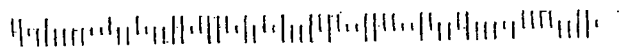
Deana Williamson, Clerk

HFJ-60

ALLEN FITZGERALD CALTON
STILES UNIT - TDC # 1123880
3060 FM 3514
BEAUMONT, TX 77705

LAB

77705



Appendix "A" opp. p. 1

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65,590-22

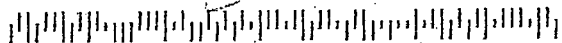
This is to advise that the applicant's suggestion for reconsideration has been
denied without written order.

Deana Williamson, Clerk

ALLEN FITZGERALD CALTON
CONNALLY UNIT - TDC # 1123880
899 FM 632
KENEDY, TX 78119

30-48B 5

IEBNAB 78119



Appendix "B" app. p. 2

Texas Code of Criminal Procedure Article 11.07

Habeas Corpus Procedure after conviction without death penalty.

Section 1. This article establishes the procedures for an application for writ of habeas corpus in which the applicant seeks relief from a felony judgment imposing a penalty other than death.

Section 2. After indictment found in any felony case, other than a case in which the death penalty is imposed and before conviction, the writ must be made returnable in the county where the offense has been committed.

Section 3.

(a) After final conviction in any felony case, the writ must be made returnable to the Texas Court of Criminal Appeals at Austin, Texas.

(b) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challenged was obtained, and the clerk shall assign the application to that court. When the application is received by that court, a writ of habeas corpus, returnable to the Texas Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and forward a copy of the application by certified mail, or by personal service to the attorney representing the state in that court, who shall answer the application not later than the 15th day after the date the copy of the application is received. Matters alleged in the application not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. Confinement

Texas Code of Criminal Procedure Article 11.07

means confinement for any offense or any collateral consequence resulting from the conviction that is the basis of the instant habeas corpus. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Texas Court of Criminal Appeals a copy of the application, any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, additional forensic testing, and hearings, as well as using personal recollection. The state shall pay the cost of additional forensic testing ordered under this subsection, except that the applicant shall pay the cost of the testing if the applicant retains counsel for purposes of filing an application under this article. The convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this Code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. On completion of the transcript, the reporter shall immediately transmit the transcript to the clerk of the convicting court. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the Texas Court of Criminal Appeals, under one cover, the application, any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in

Texas Code of Criminal Procedure Article 11.07

resolving issues of fact.

(e) For the purposes of Subsection (d), "additional forensic testing" does not include forensic DNA testing as provided for in Chapter 64.

Section 4.

(a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

- (1) the current claims and issues have not been and could not have been presented previously in an original application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application; or
- (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

(b) For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by and could not be reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

(c) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

Section 5.

The Texas Court of Criminal Appeals may deny relief

Appendix "C" app. p. 5

Texas Code of Criminal Procedure Article 11.02

upon the findings and conclusions of the hearing judge without docketing the cause, or may direct that the cause be docketed and heard as though originally presented to said court or as an appeal. Upon reviewing the record the court shall enter its judgment remanding the applicant to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Section 6.

Upon any hearing by a district judge by virtue of this act, the attorney for applicant, and the state, shall be given at least seven full days' notice before such hearing is held.

Section 7. When the attorney for the state files an answer, motion or other pleading relating to an application for writ of habeas corpus or the court issues an order relating to an application for a writ of habeas corpus, the clerk of the court shall mail or deliver to applicant a copy of the answer, motion, pleading, or order.



CASE NO. 0843168D

THE STATE OF TEXAS	§	IN THE 213TH DISTRICT
VS.	§	COURT OF
ALLEN FITZGERALD CALTON AKA: ALLEN FRITZGERALD CALTON	§	TARRANT COUNTY, TEXAS

**JUDGMENT ON JURY VERDICT OF GUILTY
PUNISHMENT FIXED BY COURT OR JURY - NO PROBATION GRANTED**

Judge Presiding	: HON. ROBERT K. GILL	Date of Judgment	: MAY 19, 2004
Attorney for State District Attorney	: TIM CURRY	Assistant District Attorney	: DAVID HAGERMAN CHARLES E. BRANDENBERG
Attorney for Defendant	: PRO SE	Charging Instrument:	INDICTMENT
<u>Offense Date</u>	<u>Convicted Offense</u>		
APRIL 23, 2002	ATTEMPTED MURDER		
<u>Degree</u>	<u>Count</u>	<u>Plea</u>	
2ND	ONE	NOT GUILTY	
Findings on Deadly Weapon	: THE JURY AFFIRMATIVELY FINDS THAT THE DEFENDANT USED OR EXHIBITED A DEADLY WEAPON, TO-WIT: A FIREARM DURING THE COMMISSION OF THE OFFENSE OR DURING THE IMMEDIATE FLIGHT THEREFROM.		
Plea to Enhancement Paragraph(s)	: NONE		
Plea to Habitual Paragraph(s)	: DEFENDANT STOOD MUTE ON BOTH HABITUAL OFFENDER NOTICES; PLEA OF NOT TRUE ENTERED BY COURT		
Findings on Enhancement/ Habitual Paragraph(s)	: BOTH ALLEGATIONS IN EITHER HABITUAL OFFENDER NOTICES FOUND TRUE BY JURY: TWO PRIOR FELONY CONVICTIONS		
Jury Verdict	: GUILTY		
Punishment Assessed By	: JURY		
Date Sentence Imposed	: MAY 20, 2004	Date to Commence	: MAY 20, 2004
Punishment Place of Confinement	: COUNT ONE - LIFE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE		
Time Credited	: 757 DAYS	Court Costs	: \$273.00
Reparation	: NONE	Restitution	: NONE

On this day, set forth above, this cause came for trial, and the State appeared by the above-named attorney, and the Defendant appeared in person in open court, the above-named counsel for Defendant also being present, or, where a Defendant is not represented by counsel, that the Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel; and the said Defendant having been duly arraigned and it appearing to the Court that Defendant was mentally competent, and having pleaded as shown above to the indictment herein, both parties announced ready for trial and thereupon a jury, to-wit, the above named foreman and eleven others, was duly selected, impaneled and sworn, who having heard the indictment read and the Defendant's plea thereto, and having heard the evidence submitted, and having been duly charged by the Court, retired in charge of the proper officer to consider the verdict, and afterward were brought into Court by the proper officer, the Defendant and Defendant's counsel being present, and returned into open court the verdict set forth above, which was received by the Court, and is

VOLUME PAGE A OF CASE NO. 0843168D

Appendix "O" app p. 7

TRANS NO. 10





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ATTEST: 10/02/2018
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Brendan Sobczak

here now entered upon the minutes of the Court as shown above.

Thereupon, the Defendant elected to have punishment assessed by the above shown assessor of punishment, and when shown above that the indictment contains enhancement paragraph(s), which were not waived, and alleges Defendant to have been convicted previously of any felony or offenses for the purpose of enhancement of punishment, then the Court asked Defendant if such allegations were true or false and Defendant answered as shown above. And when Defendant is shown above to have elected to have the jury assess punishment, such jury was called back into the box and heard evidence relative to the question of punishment and having been duly charged by the Court, they retired to consider such question, and after having deliberated, they returned into Court the verdict shown under punishment above; and when Defendant is shown above to have elected to have punishment fixed by the Court, in due form of law further evidence was heard by the Court relative to the question of punishment and the Court fixed the punishment of the Defendant as shown above.

IT IS THEREFORE CONSIDERED AND ORDERED by the Court, in the presence of the Defendant, that the said judgment be, and the same is hereby in all things approved and confirmed, and that the Defendant is adjudged guilty of the offense set forth above as found by the verdict of the jury, as set forth above, and said Defendant be punished in accordance with the Jury Verdict or the Court's Finding, as shown above and that the Defendant is sentenced to a term of imprisonment or fine or both, as set forth above, and that said Defendant be delivered by the Sheriff to the Director of the Institutional Division of the Texas Department of Criminal Justice, or other person legally authorized to receive such convicts for the punishment assessed herein, and the said Defendant shall be confined for the above named term in accordance with the provisions of law governing such punishments and execution may issue as necessary.

And, if shown above that the Defendant has been duly and legally convicted of a prior offense by showing the court, cause number, and offense, together with the punishment for such offense and date Defendant was sentenced for such offense in accordance with such conviction, then it is further ORDERED AND ADJUDGED that the punishment herein adjudged against said Defendant shall begin when the judgment in such prior offense, when shown above, shall have ceased to operate.

And the said Defendant is remanded to jail until said Sheriff can obey the direction of this judgment.

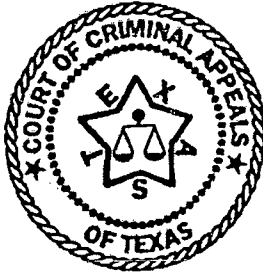
PRESIDING JUDGE

Date Signed : MAY 20, 2004

Notice of Appeal : MAY 20, 2004

Mandate Received : _____

Appendix "D" pp p.8



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-65,590-13

EX PARTE ALLEN FITZGERALD CALTON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 0843168D IN THE 213th DISTRICT COURT
FROM TARRANT COUNTY**

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of attempted murder and sentenced to life imprisonment.

In his present application, Applicant raises four grounds for challenging his conviction. This application, however, presents a more serious question. This Court's records reflect that Applicant has filed six prior applications challenging this conviction. It is obvious from the record that

Appendix "E" app. p. 9

Applicant continues to raise issues that have been presented and rejected in previous applications or that should have been presented in previous applications. The writ of habeas corpus is not to be lightly or easily abused. *Sanders v. U.S.*, 373 U.S. 1 (1963); *Ex parte Carr*, 511 S.W.2d 523 (Tex. Crim. App. 1977). Because of his repetitive claims, we hold that Applicant's claims are barred from review under Article 11.07, § 4, and are waived and abandoned by his abuse of the writ. This application is dismissed.

Therefore, we instruct the Honorable Louise Pearson, Clerk of the Court of Criminal Appeals, not to accept or file the instant application for a writ of habeas corpus, or any future application attacking this conviction unless Applicant is able to show in such an application that any claims presented have not been raised previously and that they could not have been presented in a previous application for a writ of habeas corpus. *Ex parte Bilton*, 602 S.W.2d 534 (Tex. Crim. App. 1980).

Filed: May 28, 2008
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Appendix "E" app. p. 10

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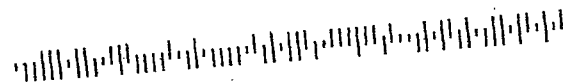
CALTON, ALLEN FITZGERALD Tr. Ct. No. C-213-011065-0843168-MWR-
65,590-27

This is to advise that the Court has dismissed without written order the original
application for writ of habeas corpus.

Deana Williamson, Clerk

ALLEN FITZGERALD CALTON
CONNALLY UNIT - TDC # 1123880
899 FM 632
KENEDY, TX 78119

AMINWAB 78119

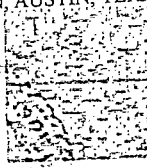


Appendix "F" app p. 11

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CALTON, ALLEN FITZGERALD Tr. Ct. No.

WR-65,590-28

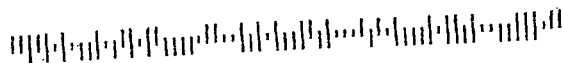
This is to advise that the Court has denied without written order the motion for leave to file the original application for writ of habeas corpus.

Deana Williamson, Clerk

3C 27B

ALLEN FITZGERALD CALTON
CONNALLY UNIT - TDC # 1123880
899 FM 632
KENEDY, TX 78119

MIWNAB 78119



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-11206

In re: ALLEN FITZGERALD CALTON,

Movant

Motion for an order authorizing
the United States District Court for the
Northern District of Texas to consider
a successive 28 U.S.C. § 2254 application

Before DAVIS, STEWART, and OLDHAM, Circuit Judges.

PER CURIAM:

Allen Fitzgerald Calton, Texas prisoner # 1123880, moves this court for authorization to file a successive 28 U.S.C. § 2254 application challenging his conviction for attempted murder. He argues that he should be permitted to bring a successive § 2254 application because he has obtained a document indicating that the police had possession of a knife, which would support his theory of self-defense. Further, he argues that he should be allowed to use his actual innocence as a gateway to bring his constitutional claims relating to the dishonest withholding of the knife from him for use at trial.

Calton fails to make a prima facie showing that the existence of the knife "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty," especially in light of the trial testimony of the victim and an eyewitness that Calton shot the victim

Appendix "H" pp p. 13

unprovoked. § 2244(b)(2)(B), (b)(3)(C). Calton's assertion of actual innocence is also unavailing. *See McQuiggin v. Perkins*, 569 U.S. 383, 386, 399 (2013). Accordingly, IT IS ORDERED that Calton's motion for authorization to file a successive § 2254 habeas application is DENIED.

This is Calton's fourth unsuccessful motion for authorization, and it is the second in which he seeks to raise claims based on the existence of the knife underlying his theory of self-defense. He is therefore WARNED that the filing of frivolous, repetitive, or otherwise abusive pleadings will invite the imposition of sanctions, which may include dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction. Calton is INSTRUCTED to review all pending matters in this court and in any court under this court's jurisdiction and move to dismiss any motions that are repetitive, frivolous, or abusive.

MOTION DENIED; SANCTION WARNING ISSUED.

Appendix "H" pp. 14

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