

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
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02 4W  
0000372116 MAY. 27. 2020.

5/6/2020

MOSS, DAVID

Tr. Ct. No. W06-61826-P(E)

WR-31,051-06

The Court has dismissed without written order this subsequent application for a writ  
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Deana Williamson, Clerk

DAVID MOSS  
POLUNSKY UNIT - TDC #1457658  
3872 FM 350 S.  
LIVINGSTON, TX 77351

14B 77351

4E 15T

APPENDIX (A)

APPENDIX (B)

THE STATE HABEAS COURT FINDINGS

Filed  
9/4/2019

Writ No. WO6-61826 (P)(E)

II.

## ISSUES RAISED IN APPLICATION

In the instant application, Applicant raises a single ground for relief alleging that he was denied the effective assistance of counsel.

III.

## STATE'S RESPONSE

### *General Denial*

The State generally denies Applicant's allegations in their entirety. Applicant has not provided sufficient proof to merit consideration of his claims. In any post-conviction collateral attack, the burden of proof is on the applicant to allege and prove sufficient facts, which if true, would entitle him to relief. *See Ex parte Maldonado*, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985). The standard of proof is by a preponderance of the evidence. *See Ex parte Adams*, 768 S.W.2d 281, 287-88 (Tex. Crim. App. 1989). Applicant has failed to meet his burden of proof. Accordingly, his request for habeas relief should be denied.

### *Application is Barred Pursuant to Article 11.07, § 4*

This is Applicant's fifth application for writ of habeas corpus filed pursuant to Article 11.07 of the Code of Criminal Procedure. Section 4 of Article 11.07 bars a court from considering the merits of a subsequent application challenging the same

conviction unless the applicant states sufficient specific facts establishing one of the following: (1) the factual or legal basis for the claim was unavailable when the previous application was filed, or (2) “by a preponderance of the evidence, but for the violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.” Tex. Crim. Proc. Code art. 11.07, § 4(a); *see also Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000). An applicant must state sufficient facts to establish an exception to section 4’s procedural bar. *See, e.g., Ex parte Sowell*, 956 S.W.2d 39, 40 (Tex. Crim. App. 1997) (holding that applicant failed to establish an exception to Section 4 because application merely tracked statutory language without setting forth sufficient specific facts establishing an exception).

A factual basis for a claim was “unavailable” on the date the previous application was filed if it was not ascertainable through the exercise of reasonable diligence on or before that date. *See Ex parte Lemke*, 13 S.W.3d 791, 793 (Tex. Crim. App. 2000). A legal basis for a claim was unavailable if it was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a state court of appellate jurisdiction on or before the date the previous application was filed. *Ex parte Sledge*, 391 S.W.3d 104, 106 (Tex. Crim. App. 2013). Applicant states no facts to show that

the factual or legal basis for his present claims were unavailable on the date he filed his previous application. Applicant also states no facts to show that, but for a constitutional violation, no rational juror could have found him guilty beyond a reasonable doubt. Because Applicant has previously filed at least one writ application, and his subsequent request for writ relief does not prove the required facts under Article 11.07, § 4(a), this subsequent writ is procedurally barred and should be dismissed.

#### IV.

#### CONCLUSION

The State respectfully requests that this Court recommend the dismissal of Applicant's Application for Writ of Habeas Corpus and/or make such findings as will see justice done in this case.

Respectfully submitted,

/s/ Rebecca Ott Labardini

**John Creuzot**  
Criminal District Attorney  
Dallas County, Texas

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**Rebecca Ott Labardini**  
Assistant District Attorney  
State Bar No. 24074842  
Frank Crowley Courts Building  
133 N. Riverfront Blvd., LB-19  
Dallas, Texas 75207-4399  
(214) 653-3625 | (214) 653-3643 fax  
rebecca.ott@dallascounty.org

**CERTIFICATE OF SERVICE**

I hereby certify that a file-marked copy of the State's Response will be served on Applicant, David Lynn Moss, TDCJ # 01457658, Polunsky Unit, 3872 FM 350 South, Livingston, Texas 77351, by placing it in the United States mail on or before September 6, 2019.

/s/ Rebecca Ott Labardini

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Rebecca Ott Labardini

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing response is 864 words in length according to Microsoft Word, which was used to prepare the response. *See Tex. R. App. P. 73.1(d), (e), and (f); Tex. R. App. P. 73.3.*

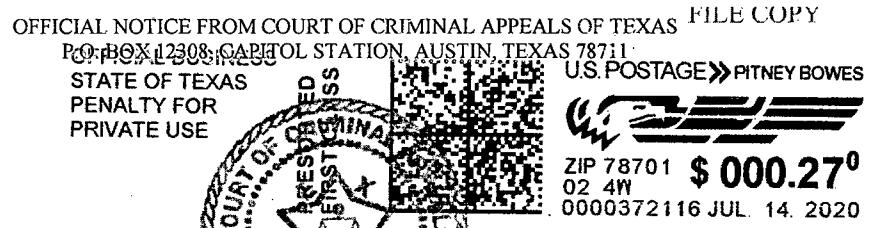
/s/ Rebecca Ott Labardini

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Rebecca Ott Labardini

APENDIX (C)

DISMISSAL OF TIMELY FILED MOTION FOR REHEARING



7/9/2020

MOSS, DAVID

Tr. Ct. No. W06-61826-P(E)

WR-31,051-06

Pursuant to Texas Rules of Appellate Procedure, Rule 79.2 (d), applicant's Motion for Reconsideration/Rehearing has been dismissed.

Deana Williamson, Clerk

DAVID MOSS  
POLUNSKY UNIT - TDC #1457658  
3872 FM 350 S.  
LIVINGSTON, TX 77351

4E. 157

3 FMAGNAB 77351

APPENDIX (C)

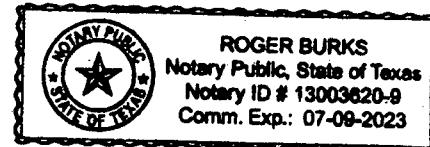
APPENDIX (D)

PORTION OF THE TRIAL RECORD , VOLUM (2) PAGE (7)

CSINIB02/CINIB02 TEXAS DEPARTMENT OF CRIMINAL JUSTICE 08/03/20  
 TL49/BR00103 IN-FORMA-PAUPERIS DATA 04:37:44  
 TDCJ#: 01457658 SID#: 02680526 LOCATION: POLUNSKY INDIGENT DTE:  
 NAME: MOSS, DAVID BEGINNING PERIOD: 02/01/20  
 PREVIOUS TDCJ NUMBERS: 00467779  
 CURRENT BAL.: 45.84 TOT HOLD AMT: 0.00 3MTH TOT DEP: 140.00  
 6MTH DEP: 265.00 6MTH AVG BAL.: 18.01 6MTH AVG DEP: 44.17  
 MONTH HIGHEST BALANCE TOTAL DEPOSITS MONTH HIGHEST BALANCE TOTAL DEPOSITS  
 07/20 45.84 30.00 04/20 26.79 25.00  
 06/20 32.34 60.00 03/20 100.74 0.00  
 05/20 51.44 50.00 02/20 100.74 100.00

STATE OF TEXAS COUNTY OF  
 ON THIS THE 3 DAY OF August 2020 I CERTIFY THAT THIS DOCUMENT IS A TRUE,  
 COMPLETE, AND UNALTERED COPY MADE BY ME OF INFORMATION CONTAINED IN THE  
 COMPUTER DATABASE REGARDING THE OFFENDER'S ACCOUNT. NP SIG:  
 PF1-HELP PF3-END ENTER NEXT TDCJ NUMBER: \_\_\_\_\_ OR SID NUMBER: \_\_\_\_\_

*Roger Burks*



No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

IN RE DAVID LYNN MOSS — PETITIONER  
(Your Name)

VS.

THE STATE OF TEXAS — RESPONDENT(S)

**PROOF OF SERVICE**

I, DAVID LYNN MOSS, do swear or declare that on this date, AUGUST 3, 2020, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

THE COURT OF CRIMINAL APPEALS OF TEXAS

P.O.BOX 12308, CAPITOL STATION

AUSTIN, TEXAS 78711

I declare under penalty of perjury that the foregoing is true and correct.

Executed on AUGUST 3, 2020



(Signature)

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

IN Re: DAVID LYNN MOSS-PETITIONER

VS.

THE STATE OF TEXAS-RESPONDENT

MOTION OF COMPLIANCE WITH 28 U.S.C. \$1746

The inclosed Petition for Writ of Certiorari has been properly filed in compliance with rule 28 U.S.C. \$1746 by being placed in the mail here of the Allen B Plounsky Unit August 3, 2020, also first class postage has been prepaid.

  
DAVID LYNN MOSS

INMATE DECLARATION

I David Lynn Moss, being presently incarcerated at the Polunsky Unit, Polk County, Texas, declare under penalty this 3rd day of August, 2020, that the claim's presented here are true and correct.

  
DAVID LYNN MOSS  
TDCJ-ID NO#1457658  
ALLEN POLUNSKY UNIT  
3872 FM 350 SOUTH  
LIVINGSTON, TEX. 77351

RECEIVED  
AUG 19 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

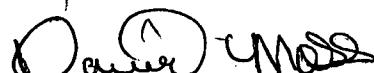
IN RE: DAVID LYNN MOSS-PETITIONER

VS.

THE STATE OF TEXAS-RESPONDENT

THIS COURT HAS JURISDICTION TO REVIEW THIS PETITION  
PURSUANT TO RULE 28 U.S.C. §1651(a)

Petitioner is seeking review of this petition in this court because the decision would aid the Texas Court of Criminal Appeals into re-evaluate there decision, also exceptional circumstances does warrant the exercise of this Court's discretionary powers, and petition has no other means for seeking adequate relief from any other Court.

  
DAVID LYNN MOSS

INMATE DECLARATION

David Lynn Moss, petitioner, being presently incarcerated in the Texas Department of Criminal Justice at the Allen Polunsky Unit DA  
Pulk County, declare under penalty this 3rd day of August 2020  
that the claim presented here is true and correct.

  
DAVID LYNN MOSS #1457658