

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS



20201209-12

Alex Adams
#1181239 Coffield Unit
2661 FM 2054
Tennessee Colony, TX US 75861

CLERK OF COURT
P.O. BOX 61010
HOUSTON, TEXAS 77208
<http://www.txs.uscourts.gov>

Date: Wednesday, December 9, 2020
Case Number: 4:19-cv-04948
Document Number: 19 (2 pages)
Notice Number: 20201209-12
Notice: The attached order has been entered.

ENTERED

December 09, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALEX ADAMS,	§	CIVIL ACTION NO.
(TDCJ-CID #1181239)	§	4:19-cv-4948
Plaintiff,	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
LORIE DAVIS, <i>et al</i> ,	§	
Defendants.	§	

ORDER

The motion for a certificate of appealability filed by Alex Adams is denied. Dkt 14.

Adams is an inmate of the Texas Department of Criminal Justice—Correctional Institutions Division. He proceeds *pro se* and *in forma pauperis*. He filed his complaint as a civil rights action under 42 USC § 1983. But he asserted at base that he was improperly charged and convicted in the Texas state courts of capital murder and attempted capital murder. He challenged the validity of his convictions and present confinement—seeking relief available only by petition for a writ of *habeas corpus*. The Court entered an order on July 20, 2020 that recharacterized the complaint according to the essence of the claims presented and dismissed them for failure to exhaust. Dkt 8.

Adams filed a notice of appeal on August 7, 2020. Dkt 14. It will be treated as a motion for a certificate of appealability.

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability when entering a final order that is adverse to the petitioner. A certificate of appealability will not issue unless the petitioner makes “a substantial showing of the denial of a constitutional right.” 28 USC § 2253(c)(2). This requires a petitioner to demonstrate “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v*

McDaniel, 529 US 473, 484 (2000). Where the court denies relief based on procedural grounds, the petitioner must show that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right,” and that they “would find it debatable whether the district court was correct in its procedural ruling.” *Ibid*.

The Court finds that jurists of reason wouldn’t debate whether any procedural ruling in this case was correct. As such, Adams hasn’t made the necessary showing to obtain a certificate of appealability.

The motion for certificate of appealability is DENIED.
Dkt 14.

SO ORDERED.

Signed on December 9, 2020, at Houston, Texas.

A handwritten signature in black ink, reading "Ch R Eskridge II". The signature is stylized with a large "C" and "E", and a Roman numeral "II" at the end.

Hon. Charles Eskridge
United States District Judge

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

December 09, 2020

Mr. Alex Adams
#1181239
CID Coffield Prison
2661 FM 2054
Tennessee Colony, TX 75884-0000

No. 20-20424 Alex Adams v. Bobby Lumpkin, Director, et al
USDC No. 4:19-CV-4948

Dear Mr. Adams,

We have docketed the appeal as shown above, and ask you to use the case number above in future inquiries.

Before this appeal can proceed you must apply for a certificate of appealability (COA) to comply with 28 U.S.C. § 2253. If you wish to proceed, address your motion for COA to this court. Also send a separate brief supporting the motion. In the brief set forth the issues, clearly give supporting arguments. Your "motion for COA" and "brief in support" together may not exceed a total of 30 pages. You must file 2 legible copies within 40 days from the date of this letter. If you do not do so we will dismiss the appeal, see 5TH CIR. R. 42. Note that 5TH CIR. R. 31.4 and the Internal Operating Procedures following rules 27 and 31 provides the general sense of the court on the disposition of a variety of matters, which includes that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

Reminder as to Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in dark ink, appearing to read 'Lyle W. Cayce', written over a horizontal line.

By:

Shawn D. Henderson, Deputy Clerk

504-310-7668

Case No. 20-20424

Alex Adams,

Petitioner - Appellant

v.

Bobby Lumpkin, Director, Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent - Appellee

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Alex Adams

versus

Case Number: 4:19-cv-04948

Judge Charles Eskridge

Lori Davis, et al.

NOTICE OF THE FILING OF AN APPEAL

An appeal has been filed by Alex Adamsd. The following appeal and related motions are pending in the District Court:

Motion to Set Aside – #13
Notice of Appeal – #14
Motion for Bond – #15

If the appellant fails to comply with the following requirements, then the Clerk of Court will submit a certificate of noncompliance to the Fifth Circuit Court of Appeals.

FILING FEE:

A filing fee is required to proceed on appeal. If the filing fee has not already been paid, then it must be paid or a motion to proceed *in forma pauperis* must be filed, unless appellant is an United States government agency.

TRANSCRIPTS:

If hearings were held in this case and the transcripts were not already produced, then transcripts must be ordered. Pursuant to FRAP 10(b)(1), a transcript order form must be filed within 14 days of the filing of the notice of appeal. Under Fifth Circuit Rule 10, the appellant's order of the transcript must be made on a DKT-13 Transcript Order form. The DKT-13 must be filed regardless of whether there were hearings or transcripts needed. A link to the DKT-13 form and instructions for ordering transcripts are available on the court's website at www.txs.uscourts.gov/page/OrderingTranscripts.

If there were no hearings or no transcripts are needed, file the DKT-13 form with the appropriate box marked to indicate so. For cases where transcripts are needed, prepare a separate DKT-13 for each reporter from whom you are ordering transcripts. All transcripts for electronically recorded proceedings may be ordered on one form. Each form should indicate the exact dates of the proceedings to be transcribed by that reporter.

EXHIBITS:

The Fifth Circuit requires exhibits admitted into evidence be included in the electronic record for transmission to the Fifth Circuit. Exhibits in the custody of the court will be electronically filed by court staff. Exhibits previously returned to the parties must be immediately electronically filed in this case by the attorney, using event Exhibits in the Trial Documents category in ECF.

Date: August 11, 2020.

David J. Bradley, Clerk

U.S.D.C. District Court
Southern District of Texas

United States Courts
Southern District of Texas
FILED

AUG 07 2020

David J. Bradley, Clerk of Court

Alex Adams #1181239

vs.

Loric Davis, C.I.D.

§ Civil Act. NO. 4:19-cv-494.
Judge
Charles Eskridge.

Notice of Appeal

On July 20, 2020 Thus said Court above: That
Civil Acti NO. 4:19-cv-4948 was dismissed
Without Prejudice.

The law of the land states clearly. You must
have two complaining witnesses, and evidence,
Texas D.N.A. in Houston: Said that none
tests done link me to these crimes.

My Actual Innocence Claim is based
on New Evidence.

Inmate Declaration

I Alex Adams #1181239 in Anderson County
TX at Coffield Unit due swear under
Penalty of Perjury, That foregoing is true
and correct.

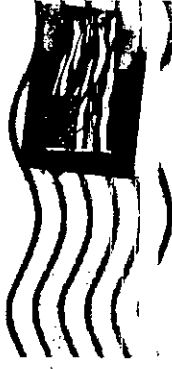
Aug. 3, 2020 Alex Adams

Alex Adams #1181239

C.O. Unit

2661 F.M. 2054

Tennessee Colony, Tx. 75861



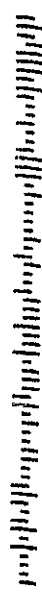
NORTH TEXAS-TX P&DC
DALLAS TX 750
United States August 7, 2020 PM 10 L
Southern District of Texas
FILED

AUG 07 2020

David J. Bradley, Clerk of Court

U.S. D.C. District Court
Southern District of Texas
P.O. BOX 61010
Houston, TX. 77208

77208-101010



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

August 18, 2020

#1181239
Mr. Alex Adams
CID Coffield Prison
2661 FM 2054
Tennessee Colony, TX 75884-0000

No. 20-20424 Alex Adams v. Bobby Lumpkin, Director, et al
USDC No. 4:19-CV-4948

Dear Mr. Adams,

We have docketed your appeal. You should use the number listed above on all future correspondence.

You should carefully read the following sections

Filings in this court are governed strictly by the Federal Rules of Appellate Procedure, **NOT** the Federal Rules of Civil Procedure. We cannot accept motions submitted under the Federal Rules of Civil Procedure. We can address only those documents the court directs you to file, or motions filed under the Fed. R. App. P. in support of the appeal. See Fed. R. App. P. and 5TH Cir. R. 27 for guidance. Documents not authorized by these rules will not be acknowledged or acted upon.

Your motion for Certificate of Appealability is pending in the district court.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.

Brief Template: The clerk's office offers brief templates and the ability to check the brief for potential deficiencies prior to docketing to assist in the preparation of the brief. To access these options, log in to CM/ECF and from the Utilities menu, select 'Brief Template' (Counsel Only) or 'PDF Check Document'.

We recommend that you visit the Fifth Circuit's website, www.ca5.uscourts.gov and review material that will assist you

during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk

cc: Mr. David J. Bradley

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 20-20424

Alex Adams,

Petitioner - Appellant

v.

Bobby Lumpkin, Director, Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent - Appellee



MARILYN BURGESS
HARRIS COUNTY DISTRICT CLERK

September 29, 2020

Alex Adams
#01181239- Coffield Unit
2661 FM 2054
Tennessee Colony, Tx 75884

To Whom It May Concern:

Pursuant to Article 11.07 of the Texas Code of Criminal Procedure, please find enclosed copies of the documents indicated below concerning the Post-Conviction Writ filed in cause number 878065-B in the 208th District Court.

- ☒ STATE'S ORIGINAL ANSWER FILED- **SEPTEMBER 25, 2020**
- ☐ AFFIDAVIT FILED- -
- ☐ COURT ORDER DATED
- ☐ STATE'S PROPOSED ORDER DESIGNATING ISSUES AND FOR FILING AFFIDAVIT. -
- ☐ STATE'S PROPOSED FINDINGS OF FACT AND ORDER--
- ☐ OTHER-ORDER -

Sincerely,

/s/ T. Reed-Solomon
T. Reed-Solomon, Deputy
Criminal Post Trial

Enclosure(s) -

NO. 878065-B

EX PARTE	§	IN THE 208TH DISTRICT
	§	COURT OF
ALEX ADAMS, Applicant	§	HARRIS COUNTY, TEXAS

STATE'S ORIGINAL ANSWER

The State of Texas, through its Assistant District Attorney for Harris County, files this, its original answer in the above-captioned cause, having been served with an application for writ of habeas corpus pursuant to TEX. CRIM. PROC. CODE ANN. art. 11.07 § 3, and would show the following:

I.

Applicant is confined pursuant to the judgment and sentence of the 208th District Court of Harris County, Texas, in cause number 878065 (the primary case), where Applicant was convicted pursuant to a jury verdict for the felony offense of capital murder of a police officer. The Court assessed punishment at lifetime confinement in the Texas Department of Criminal Justice – Correctional Institutions Division. The Fourteenth Court of Appeals affirmed the trial court's judgment. *Adams v State*, No. 14-03-00832-CR (Tex. App.—Houston [14th Dist.] Oct. 12, 2004, no pet.) (mem. op. not designated for publication). Applicant's first writ, WR-79,453-01, was denied on the trial court findings without a written order on May 8, 2013. Applicant filed the instant pro se writ on August 13, 2020.

II.

The State denies the factual allegations made in the instant application, except those supported by official trial court records and offers the following additional reply:

REPLY TO APPLICANT'S SOLE GROUND FOR RELIEF

In his sole ground for relief, Applicant alleges he is actually innocent. *Applicant's Writ at 6*. Claims of actual innocence are cognizable on habeas. *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996); *State ex rel. Holmes v. Third Court of Appeals*, 885 S.W.2d 389 (Tex. Crim. App. 1994). Applicant presents a bare-innocence claim. In order to obtain habeas relief for this type of claim, an applicant must prove by clear and convincing evidence that a jury would acquit him based on newly-discovered evidence. *Elizondo*, 947 S.W.2d at 209.

Newly-discovered evidence refers to "evidence that was not known to the applicant at the time of trial and could not be known to him even with the exercise of due diligence. The applicant cannot rely upon evidence or facts that were available at the time of his trial, plea, or post-trial motions, such as a motion for new trial." *Ex parte Brown*, 205 S.W.2d 538, 545 (Tex. Crim. App. 2006)(citing *Ex parte Briggs*, 187 S.W.3d 458, 465 (Tex. Crim. App. 2005), and *Ex parte Tuley*, 109 S.W.3d 398, 403 (Tex. Crim. App. 2002)).

Applicant alleges a DNA mixture project report stated that the testing done does not link him to the crimes. *Applicant's Writ at 6*. Applicant does not attach any exhibits to indicate where this information is from, so the State will operate under the assumption that he is referring to a process arising from a letter sent to Applicant by the Harris County Conviction Integrity division on March 22, 2017. *See State's Writ Exhibit A – Letter to Alex Adams*. The letter states that if Applicant's case included DNA mixture evidence, that the statistics on the mixture results may be recalculated by request.

It appears Applicant's case was reviewed by the DNA Mixture Team, and the case was closed out due to the DNA being inconclusive. *See State's Writ Exhibit B-Email for 878065*. The DNA Mixture Team, contrary to Applicant's assertion, did not find that the results exonerate Applicant. The original DNA results in the case mention a mixture, however, there were no statistics calculated on the submitted items. *See State's Writ Exhibit C- DNA report for 878065*. Further, an eyewitness saw Applicant shoot the complainant. *See Adams v State*, No. 14-03-00832-CR at 2. Applicant fails to show that there was a mixture in his case that would establish he is actually innocent. Applicant fails to show that the DNA in his case establishes he is actually innocent. Applicant fails to meet his burden to show he is actually innocent of capital murder. Therefore, Applicant's sole ground for relief is without merit and should be denied.

III.

Applicant raises questions of law and fact which can be resolved by the Court of Criminal Appeals upon review of official court records and without need for an evidentiary hearing.

SIGNED this 21 day of September, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'B. Schwartz', enclosed within a hand-drawn oval.

BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
(713) 274 – 5990
Schwartz_BreAnna@dao.hctx.net
Texas Bar ID #24076954

CERTIFICATE OF SERVICE

Due to the Covid-19 outbreak, the Post-Conviction Division of the Harris County District Attorney's Office is operating remotely. Consequently, there have been disruptions to the State's mailing capabilities. As such, a copy of this instrument will be mailed as soon as practicable to the applicant at the following address:

Alex Adams TDCJ ID: 01181239
Coffield Unit
2661 FM 2054
Tennessee Colony, TX 75884



BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
(713) 274 – 5990
Schwartz_BreAnna@dao.hctx.net
Texas Bar ID #24076954

NO. 878065-B

EX PARTE

§ IN THE 208TH DISTRICT

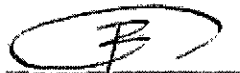
§ COURT OF

ALEX ADAMS,
Applicant

§ HARRIS COUNTY, TEXAS

CERTIFICATE OF COMPLIANCE REQUIRED BY RULE 73.1(f)

The State of Texas, through its Assistant District Attorney for Harris County, certifies that the State's Original Answer, a computer generated document, has a word count of 501 words, based upon the representation provided by the word processing program that was used to create this document.



BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
(713) 274 – 5990
Schwartz_BreAnna@dao.hctx.net
Texas Bar ID #24076954

Tom Berg
First Assistant

Vivian King
Chief of Staff



Filed 17 April 05 A12:00
Chris Daniel - District Clerk
Harris County
FAX 02012 Justice Center
By: System, User
1800 Franklin, Suite 600
Houston, Texas 77002-1901

HARRIS COUNTY DISTRICT ATTORNEY
KIM K. OGG

ADAMS, ALEX; #01181239
MICHAEL UNIT
2664 FM 2054
TENNESSEE COLONY, TX 75886

March 22, 2017

Re: *The State of Texas vs. ADAMS, ALEX; Cause number 0878065*
The State of Texas vs. ADAMS, ALEX; Cause number 0878066

You were prosecuted in the above-styled case(s) for an offense that *may* have included the analysis of DNA mixture evidence by a Texas crime laboratory. A DNA mixture refers to evidence that includes DNA from more than one person. When a DNA mixture is analyzed, the laboratory report often includes a statistic informing the judge or jury how probable it is that a random person who is unrelated to you could be included in the DNA mixture.

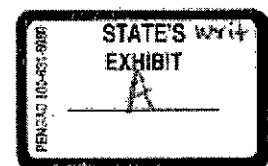
DNA evidence has become more complicated over the last 5-10 years, and forensic scientists have recently become aware that a common statistical method they used may not always have taken into account certain important scientific limitations.

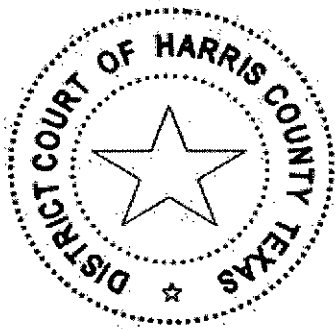
The Texas Forensic Science Commission is in the process of working with prosecutors, defense attorneys and laboratories to determine which cases may have problems.

If your case(s) does involve DNA Mixture evidence, and you would like your case(s) recalculated on the DNA mixture issue, please fill out the attached form and send it to the address provided. Do not send the form to our office as it will only delay the processing of your request. If your contact information changes at any point after submitting the attached form, please provide your new contact information as soon as possible.

Sincerely,

Randi P. Capone
Assistant District Attorney
Conviction Integrity Unit
Harris County District Attorney's Office





I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this August 25, 2020

Certified Document Number: 74546783 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

HOUSTON POLICE DEPARTMENT
OFFENSE REPORT

SUPPLEMENT (S)

No-0053

Offense- CAPITAL MURDER/ATTEMPTED CAPITAL MURDER

street location info mation

Number-- 6200 Name-MARINETTE

1408-

5475 x

Apr 10- Name 06204

Typical

$$f_1(x) =$$

Date of offense-05/22/01

Date of supplement-05/22/02

Comp1(s) Last -VASQUEZ

First: BERTO

middle-

Recovered stolen vehicles information

istricts -

Recovery location-

Stored-

b7c-

Officer1-CHU

Emp#-293070 Shift: 1 Div/Station-CRIME

SUPPLEMENT NARRATIVE

REFERENCE: L01-7564

SUSPECT: ALEX M. ADAMS

ON MAY 23, 2001 THE FOLLOWING ITEMS WERE SUBMITTED TO THE LABORATORY:

CRUTCH

TWO BULLETS

2. JACKED FRAGMENTS

ONE LEAD CORE

TWO FILIETS

.36 CAL. GUN (A-1120 ROMAN MODEL 95)

ON MAY 24, 2001 THE FOLLOWING ITEMS WERE SUBMITTED TO THE LABORATORY:

GAUZE WITH BLOOD FROM ALEX M. ADAMS

BULLET AND FRAGMENT FROM ALEX M. ADAMS

RESULTS:

HUMAN BLOOD WAS DETECTED ON THE FRONT OF THE CRUTCH, GUN, GUAYE, AND THE BULLET COLLECTED FROM ALEX M. ADAMS.

A MIXTURE OF DNA TYPES CONSISTENT WITH THE DNA FROM THE GUAZE AND 100% OF THE GUN WAS DETECTED ON THE CLOTHES FROM THE CRUTCH.

SAME DNA TYPE WAS DETECTED ON THE GUZE, AND THE BULL'S HEAD ALIVE
ADAMS.



Incident no. 068021001 N

OFFENS. REPORT

SYSTEM ADVISORY: K. ORT ENTERED USING PERSONAL CO. 110 V

* ENTRY DEVICE: NEC POWERMATE 176216 S12

* ENTRY FROM DATE-052202 TIME-0748 TO DATE-052202 TIME-0752

* TRANSFER DEVICE: NEC POWERMATE 176216 S12

* TRANSFER DATE-052202 TIME-0752 LOAD DATE 052202 TIME-0802

* LOCATION OF OFFENSE. POLICE DISTRICT-DOWNTOWN REAR 1A DIST-DN

EVIDENCE WAS TAGGED-N LATENT PRINTS WERE LIFT AT 1 SC

Supplement entered by # 93070.

Date cleared 05/23/01

END OF REPORT



MARILYN BURGESS
HARRIS COUNTY DISTRICT CLERK

September 29, 2020

Alex Adams
#01181239- Coffield Unit
2661 FM 2054
Tennessee Colony, Tx 75884

To Whom It May Concern:

Pursuant to Article 11.07 of the Texas Code of Criminal Procedure, please find enclosed copies of the documents indicated below concerning the Post-Conviction Writ filed in cause number 878065-B in the 208th District Court.

- ☐ STATE'S ORIGINAL ANSWER FILED-
- ☐ AFFIDAVIT FILED- -
- ☐ COURT ORDER DATED
- ☐ STATE'S PROPOSED ORDER DESIGNATING ISSUES AND FOR FILING AFFIDAVIT. -
- ☒ STATE'S PROPOSED FINDINGS OF FACT AND ORDER- **SEPTEMBER 28, 2020**
- ☐ OTHER-ORDER -

Sincerely,

/s/ T. Reed-Solomon
T. Reed-Solomon, Deputy
Criminal Post Trial

Enclosure(s) -

NO. 878065-B

EX PARTE	§	IN THE 208TH DISTRICT
	§	COURT OF
ALEX ADAMS, Applicant	§	HARRIS COUNTY, TEXAS

**STATE'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Court has considered the application for writ of habeas corpus, the State's answer (including any attached exhibits), and official trial court records in the above-captioned cause. The Court finds that there are no controverted, previously unresolved facts material to the legality of the applicant's confinement which require an evidentiary hearing and recommends that the instant habeas application, cause number 878065-B, be DENIED based on the following:

Findings of Fact

1. Applicant is confined pursuant to the judgment and sentence of the 208th District Court of Harris County, Texas, in cause number 878065 (the primary case), where Applicant was convicted pursuant to a jury verdict for the felony offense of capital murder of a police officer. The court assessed punishment at lifetime confinement in the Texas Department of Criminal Justice – Correctional Institutions Division. The Fourteenth Court of Appeals affirmed

the trial court's judgment. *Adams v State*, No. 14-03-00832-CR (Tex. App.—Houston [14th Dist.] Oct. 12, 2004, no pet.) (mem. op. not designated for publication).

2. Applicant's first writ, WR-79,453-01, was denied on the trial court findings without a written order on May 8, 2013.
3. Applicant filed the instant pro se writ on August 13, 2020.
4. The trial court timely designated issues to be addressed.
5. Applicant's sole ground for relief alleges he is actually innocent. *Applicant's Writ at 6.*
6. Applicant alleges his case was reviewed by the DNA mixture project, and a subsequent report stated that the testing does not link him to the crimes. *Applicant's Writ at 6.*
7. Applicant does not attach any exhibits to support this claim.
8. On March 22, 2017 the Harris County Conviction Integrity division sent Applicant a letter stating that if Applicant's case included DNA mixture evidence, that the statistics on the mixture results may be recalculated by request. *See State's Writ Exhibit A – Letter to Alex Adams.*
9. Applicant's case was reviewed by the DNA Mixture Team, and the case was closed out due to the DNA being inconclusive. *See State's Writ Exhibit B*

Email for 878065.

10. The original DNA results in the case mention a mixture, however, there were no statistics calculated on the submitted items. *See State's Writ Exhibit C- DNA report for 878065.*
11. Applicant fails to show that there was a mixture in his case that establishes he is actually innocent.
12. Applicant fails to show that the DNA evidence in his case establishes that he is actually innocent.
13. Applicant fails to meet his burden to show he is actually innocent of capital murder.
14. Applicant fails to show that his conviction was improperly obtained.

Conclusions of Law

1. Applicant's statement that he is actually innocent is not enough to warrant habeas relief, and even if sworn to, is insufficient to overcome the State's denial. *Ex parte Young*, 418 S.W.2d 824 (Tex. Crim. App. 1967); *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex. Crim. App. 1988).
2. In order to obtain habeas relief for his actual innocence claim, Applicant must prove by clear and convincing evidence that a jury would acquit him based on

newly-discovered evidence. *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996).

3. Newly-discovered evidence refers to “evidence that was not known to the applicant at the time of trial and could not be known to him even with the exercise of due diligence.” *Ex parte Brown*, 205 S.W.2d 538, 545 (Tex. Crim. App. 2006)(citing *Ex parte Briggs*, 187 S.W.3d 458, 465 (Tex. Crim. App. 2005), and *Ex parte Tuley*, 109 S.W.3d 398, 403 (Tex. Crim. App. 2002)).
4. Applicant fails to establish by clear and convincing evidence that based upon the DNA evidence, no reasonable juror could have found Applicant guilty. *Ex parte Brown*, 205 S.W.3d 538, 545 (Tex. Crim. App. 2006).
5. In a habeas proceeding, Applicant bears the burden of proving, by a preponderance of the evidence, the facts that would entitle him to relief. *Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002).
6. Applicant’s conclusory allegations, even if sworn to, do not overcome the State’s denial and do not warrant habeas relief. *Ex parte Young*, 418 S.W.2d 824 (Tex. Crim. App. 1967); *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex. Crim. App. 1988).

7. In all things, Applicant fails to demonstrate his conviction was improperly obtained or that he is being improperly confined.

ORDER

THE CLERK IS ORDERED to prepare a transcript and transmit same to the Court of Criminal Appeals as provided by TEX. CRIM. PROC. CODE art. 11.07 (West 2015). The transcript shall include certified copies of the following documents:

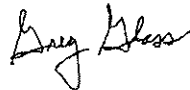
1. the application for writ of habeas corpus;
2. the State's answer (including any exhibits and attachments);
3. the Court's order;
4. the indictment, judgment and sentence, and docket sheets in cause number 878065;
5. The appellate opinion in cause number 878065.

THE CLERK is further ORDERED to send a copy of this order to the applicant, Alex Adams TDCJ ID: 01181239, Coffield Unit, 2661 FM 2054, Tennessee Colony, TX 75884, and to counsel for the State, BreAnna Schwartz, 500 Jefferson Street, Suite 600, Houston, Texas 77002.

By the following signature, the Court adopts the State's Proposed Findings of Fact, Conclusions of Law and Order in Cause Number 878065-B.

SIGNED AND ENTERED.

Signed:
9/28/2020



JUDGE PRESIDING, 208TH DISTRICT COURT
HARRIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

Due to the Covid-19 outbreak, the Post-Conviction Division of the Harris County District Attorney's Office is operating remotely. Consequently, there have been disruptions to the State's mailing capabilities. As such, a copy of this instrument will be mailed as soon as practicable to the applicant at the following address:

Alex Adams TDCJ ID: 01181239
Coffield Unit
2661 FM 2054
Tennessee Colony, TX 75884



BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
(713) 274 – 5990
Schwartz_BreAnna@dao.hctx.net
Texas Bar ID #24076954

NO. 0878065-B

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ADDO

EX PARTE

§ IN THE 208TH DISTRICT

§ COURT OF

ALEX ADAMS,
Applicant

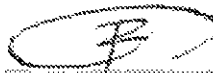
§ HARRIS COUNTY, TEXAS

STATE'S MOTION REQUESTING DESIGNATION OF ISSUE

The State of Texas, by and through its Assistant District Attorney for Harris County, requests that this Court, pursuant to TEX. CODE CRIM. PROC. art. 11.07, §3(d), designate the issue of whether the applicant's DNA results are subject to recalculation as needing to be resolved in the instant proceeding.

SIGNED this 1 day of September, 2020.

Respectfully submitted,



BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
(713) 274 - 5990
Schwartz_BreAnna@dao.hctx.net
Texas Bar ID #24076954

NO. 0878065-B

EX PARTE

§ IN THE 208TH DISTRICT

§ COURT OF

ALEX ADAMS,
Applicant

§ HARRIS COUNTY, TEXAS

STATE'S PROPOSED ORDER DESIGNATING ISSUE

Having reviewed the applicant's application for writ of habeas corpus, the Court finds that the issue of whether the applicant's DNA results are subject to mixture recalculation needs to be resolved in the instant proceeding.

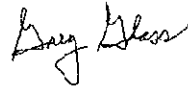
Therefore, pursuant to Article 11.07, §3(d), this Court will resolve the above-cited issues and then enter findings of fact.

The Clerk of the Court is **ORDERED** to transmit the Court's instant order designating issues to the Court of Criminal Appeals.

By the following signature, the Court adopts the State's Proposed Order Designating an Issue and Order for Filing Affidavit in Cause 878065-B.

Signed and Entered.

Signed:
9/1/2020

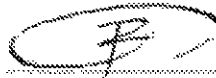


PRESIDING JUDGE, 208TH DISTRICT COURT
HARRIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

Due to the Covid-19 outbreak, the Post-Conviction Division of the Harris County District Attorney's Office is operating remotely. Consequently, there have been disruptions to the State's mailing capabilities. As such, a copy of this instrument will be mailed as soon as practicable to the applicant at the following address:

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Tennessee Colony, TX 75884



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NO. 0878066-A

EX PARTE

§ IN THE 208TH DISTRICT

§ COURT OF

ALEX ADAMS,
Applicant

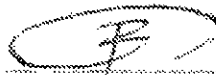
§ HARRIS COUNTY, TEXAS

STATE'S MOTION REQUESTING DESIGNATION OF ISSUE

The State of Texas, by and through its Assistant District Attorney for Harris County, requests that this Court, pursuant to TEX. CODE CRIM. PROC. art. 11.07, §3(d), designate the issue of whether Applicant's DNA results are subject to recalculation as needing to be resolved in the instant proceeding.

SIGNED November 2, 2020.

Respectfully submitted,



BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
(713) 274 - 5990
Schwartz_BreAnna@dao.hctx.net
Texas Bar ID #24076954



MARILYN BURGESS
HARRIS COUNTY DISTRICT CLERK

November 4, 2020

Alex Adams
#01181239- Coffield
2661 FM 2054
Tennessee Colony, Tx 75884

To Whom It May Concern:

Pursuant to Article 11.07 of the Texas Code of Criminal Procedure, please find enclosed copies of the documents indicated below concerning the Post-Conviction Writ filed in cause number 08780660101B- in the 208th District Court.

- ☐ STATE'S ORIGINAL ANSWER FILED-
- ☐ AFFIDAVIT FILED- -
- ☐ COURT ORDER DATED
- ☒ STATE'S PROPOSED ORDER DESIGNATING ISSUES. – **November 3, 2020**
- ☐ STATE'S PROPOSED FINDINGS OF FACT AND ORDER–
- ☐ OTHER–

Sincerely,

/s/ *T. Reed-Solomon*
T. Reed-Solomon, Deputy
Criminal Post Trial

Enclosure(s) –

NO. 0878066-A

EX PARTE

§ IN THE 208TH DISTRICT

§ COURT OF

ALEX ADAMS,
Applicant

§ HARRIS COUNTY, TEXAS

STATE'S PROPOSED ORDER DESIGNATING ISSUE


Having reviewed the applicant's application for writ of habeas corpus, the Court finds that the issue of whether Applicant's DNA results are subject to recalculation needs to be resolved in the instant proceeding.

Therefore, pursuant to Article 11.07, §3(d), this Court will resolve the above-cited issues and then enter findings of fact.

By the following signature, the Court adopts the State's Proposed Order Designating an Issue and Order for Filing Affidavit in Cause 0878066-A.

Signed and Entered.

Signed:
11/3/2020



PRESIDING JUDGE, 208TH DISTRICT COURT
HARRIS COUNTY, TEXAS

NO. 878066-B

EX PARTE

§ IN THE 208TH DISTRICT

§ COURT OF

ALEX ADAMS,
Applicant

§ HARRIS COUNTY, TEXAS

STATE'S ORIGINAL ANSWER

The State of Texas, through its Assistant District Attorney for Harris County, files this, its original answer in the above-captioned cause, having been served with an application for writ of habeas corpus pursuant to TEX. CRIM. PROC. CODE ANN. art. 11.07 § 3, and would show the following:

I.

Applicant is confined pursuant to the judgment and sentence of the 208th District Court of Harris County, Texas, in cause number 878066 (the primary case), where Applicant was convicted pursuant to a jury verdict for the felony offense of attempted capital murder of a police officer. The Court assessed punishment at lifetime confinement in the Texas Department of Criminal Justice – Correctional Institutions Division. The Fourteenth Court of Appeals affirmed the trial court's judgment. *Adams v State*, No. 14-03-00832-CR (Tex. App.—Houston [14th Dist.] Oct. 12, 2004, no pet.) (mem. op. not designated for publication). Applicant's first writ, WR-79,453-02, was denied on the trial court findings without a written order on May 8, 2013. Applicant filed the instant pro se writ on September 14, 2020. The

State was served with Applicant's writ on October 7, 2020.

II.

The State denies the factual allegations made in the instant application, except those supported by official trial court records and offers the following additional reply:

REPLY TO APPLICANT'S SOLE GROUND FOR RELIEF

In his sole ground for relief, Applicant alleges he is actually innocent. *Applicant's Writ at 6*. Claims of actual innocence are cognizable on habeas. *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996); *State ex rel. Holmes v. Third Court of Appeals*, 885 S.W.2d 389 (Tex. Crim. App. 1994). Applicant presents a bare-innocence claim. In order to obtain habeas relief for this type of claim, an applicant must prove by clear and convincing evidence that a jury would acquit him based on newly-discovered evidence. *Elizondo*, 947 S.W.2d at 209.

Newly-discovered evidence refers to "evidence that was not known to the applicant at the time of trial and could not be known to him even with the exercise of due diligence. The applicant cannot rely upon evidence or facts that were available at the time of his trial, plea, or post-trial motions, such as a motion for new trial." *Ex parte Brown*, 205 S.W.2d 538, 545 (Tex. Crim. App. 2006)(citing *Ex parte Briggs*, 187 S.W.3d 458, 465 (Tex. Crim. App. 2005), and *Ex parte Tuley*, 109 S.W.3d 398, 403 (Tex. Crim. App. 2002)).

Applicant alleges a new report from the DNA mixture project indicates that the DNA evidence does not link him to the crimes. *Applicant's Writ at 6*. Applicant does not attach any exhibits to indicate where this information is from, so the State will operate under the assumption that he is referring to a process arising from a letter sent to Applicant by the Harris County Conviction Integrity division on March 22, 2017. *See State's Writ Exhibit A – Letter to Alex Adams*. The letter states that if Applicant's case included DNA mixture evidence, that the statistics on the mixture results may be recalculated by request.

It appears Applicant's case was reviewed by the DNA Mixture Team, and the case was closed out due to the DNA being inconclusive. *See State's Writ Exhibit B-Email for 878065*.¹ The DNA Mixture Team, contrary to Applicant's assertion, did not find that the results exonerate Applicant. The original DNA results in the case mention a mixture, however, there were no statistics calculated on the submitted items. *See State's Writ Exhibit C- DNA report for 878065*. Applicant fails to show that there was a mixture in his case that would establish he is actually innocent. Applicant fails to show that the DNA in his case establishes he is actually innocent. Applicant fails to

¹ Applicant was charged with capital murder in cause 878065 for conduct arising out of the same transaction as the instant cause. As a result, the correspondence about Applicant's cases is listed under the lowest applicable cause number.

meet his burden to show he is actually innocent of capital murder. Therefore, Applicant's sole ground for relief is without merit and should be denied.

III.

Applicant raises questions of law and fact which can be resolved by the Court of Criminal Appeals upon review of official court records and without need for an evidentiary hearing.

SIGNED this 20 day of November, 2020.

Respectfully submitted,



BreAnna Schwartz
Assistant District Attorney
Harris County, Texas
500 Jefferson Street, Suite 600
Houston, Texas 77002
(713) 274 - 5990
Schwartz_BreAnna@dao.hctx.net
Texas Bar ID #24076954

CERTIFICATE OF SERVICE

Due to the Covid-19 outbreak, the Post-Conviction Division of the Harris County District Attorney's Office is operating remotely. Consequently, there have been disruptions to the State's mailing capabilities. As such, a copy of this instrument will be mailed as soon as practicable to the applicant at the following address:

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NO. 878066-B

EX PARTE

§ IN THE 208TH DISTRICT

ALEX ADAMS,
Applicant

§ COURT OF

§ HARRIS COUNTY, TEXAS

CERTIFICATE OF COMPLIANCE REQUIRED BY RULE 73.1(f)

The State of Texas, through its Assistant District Attorney for Harris County, certifies that the State's Original Answer, a computer generated document, has a word count of 709 words, based upon the representation provided by the word processing program that was used to create this document.



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NO. 878066-B

EX PARTE § IN THE 208TH DISTRICT

§ COURT OF
ALEX ADAMS,
Applicant § HARRIS COUNTY, TEXAS

**STATE'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Court has considered the application for writ of habeas corpus, the State's answer (including any attached exhibits), and official trial court records in the above-captioned cause. The Court finds that there are no controverted, previously unresolved facts material to the legality of the applicant's confinement which require an evidentiary hearing and recommends that the instant habeas application, cause number 878065-B, be DENIED based on the following:

Findings of Fact

1. Applicant is confined pursuant to the judgment and sentence of the 208th District Court of Harris County, Texas, in cause number 878066 (the primary case); where Applicant was convicted pursuant to a jury verdict for the felony offense of attempted capital murder of a police officer. The court assessed punishment at lifetime confinement in the Texas Department of Criminal Justice - Correctional Institutions Division. The Fourteenth Court of Appeals

No. 20-20424

denied a request for habeas relief on procedural grounds, the movant must show that jurists of reason could find it debatable both whether "the petition states a valid claim of the denial of a constitutional right" and whether "the district court was correct in its procedural ruling." Slack, 529 U.S. at 484. Adams has not met this standard.

Accordingly, IT IS ORDERED that the motion for a COA is DENIED. The other pending motions are DENIED AS MOOT.

CATHARINA HAYNES
United States Circuit Judge

One of Adams's motions alleges that he has been attacked by another inmate, has not received medical treatment for his wounds, and has not eaten out of fear of having to interact with the inmate who allegedly attacked him. Nothing about this order should be construed to prevent Adams from filing any timely and appropriate grievances concerning those incidents with the Texas Department of Criminal Justice or from seeking any other appropriate relief.