

United States Court of Appeals
for the Fifth Circuit

No. 20-10613

STEVE HERBERT SPECKMAN,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-107

Before CLEMENT, ELROD, and HIGGINSON, *Circuit Judges.*

PER CURIAM:

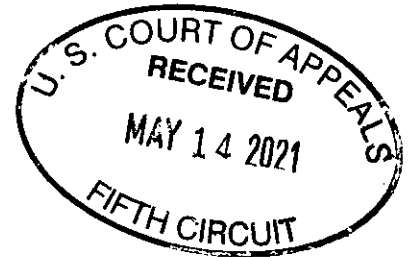
IT IS ORDERED that appellant's motion for leave to file out of time the motion for reconsideration is GRANTED.

A member of this panel previously DENIED appellant's motions for a certificate of appealability and for leave to file a supplemental motion for a certificate of appealability. The panel has considered appellant's motion for reconsideration.

IT IS FURTHER ORDERED that the motion is DENIED.

United States Court of Appeals *Decided April 23, 2021*
for the Fifth Circuit

No. 20-10613



STEVE HERBERT SPECKMAN,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,*
Correctional Institutions Division,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-107

ORDER:

Steve Herbert Speckman, proceeding *pro se*, seeks a certificate of appealability to review the district court's denial of his petition for writ of habeas corpus brought under 28 U.S.C. § 2254.

In 2004, Speckman pleaded guilty to one count of aggravated sexual assault of a child under fourteen years old. He was placed on deferred adjudication community supervision and assessed a fine. Although Speckman filed a motion for a new trial, he neither appealed the judgment of

deferred adjudication in a timely manner nor moved the court for a final adjudication of his guilt. After the state sought to adjudicate Speckman's guilt based on alleged violations of the conditions of his community supervision, Speckman fled to Mexico until 2013.


At that point, he returned to the United States, pleaded true to the violations, was adjudicated guilty, and received a sentence of thirty years' confinement. Speckman subsequently filed writs of certiorari first in the Texas Court of Criminal Appeals and then in the United States Supreme Court. Both were denied. In 2020, Speckman brought four claims in federal district court under § 2254 to complain of ineffective assistance of counsel in the initial plea proceedings, the motion-for-new-trial proceedings, and the 2013 adjudication proceedings. The district court denied Speckman's petition for writ of habeas corpus as untimely and denied him a certificate of appealability.

We may grant a certificate of appealability only in cases where the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Norris v. Davis*, 826 F.3d 821, 827 (5th Cir. 2016) (quoting *Garza v. Stephens*, 738 F.3d 669, 673 (5th Cir. 2013)). A petitioner meets standard if he "demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

It is clear from the record in this case and from Speckman's motion that reasonable jurists would not debate that Speckman's § 2254 petition was untimely. Even if we accepted all of Speckman's arguments regarding statutory and equitable tolling of the federal statute of limitations, his petition would still have been untimely.

Accordingly, IT IS ORDERED that Speckman's motion for a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that Speckman's motion to file a supplement to his motion for a certificate of appealability is also DENIED.


JENNIFER WALKER ELROD
United States Circuit Judge

SUPREME COURT OF THE
UNITED STATES

Steve Herbert Speckman
Petitioner

v

Bobby Lumpkin - Director
Texas Department of Criminal Justice
Respondent

PETITION FOR WRIT OF CERTIORARI

APPENDIX B

Decision - U.S. District Court



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

STEVE HERBERT SPECKMAN,

Petitioner,

v.

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

Respondent.

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Civil Action No. 4:20-CV-107-O

OPINION AND ORDER

Before the Court is a petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by Petitioner, Steve Herbert Speckman, a state prisoner confined in the Correctional Institutions Division of the Texas Department of Criminal Justice (TDCJ), against Lorie Davis, director of TDCJ, Respondent. After considering the pleadings and relief sought by Petitioner, the Court has concluded that the petition should be dismissed as time-barred.

I. BACKGROUND

On July 12, 2004, in the 372nd District Court, Tarrant County, Texas, Case No. 0861282D, pursuant to a plea bargain agreement, Petitioner pleaded guilty to one count of aggravated sexual assault of a child under 14 years of age and was placed on 10 years' deferred adjudication community supervision and assessed a \$1000 fine. Clerk's R. 126-30, 132, ECF No. 12-2. Although Petitioner filed a motion for new trial, he did not move for a final adjudication of his guilt or appeal the judgment of deferred adjudication within thirty days: *Id.* at 139-43; Resp't's Preliminary Answer 10, ECF No. 11. Therefore, the judgment became final on August 11, 2004. TEX. R. APP. P. 26.2(a)(1).

On January 4, 2005, the state filed its first motion to adjudicate Petitioner's guilt based on various alleged violations of the conditions of his community supervision. *Id.* at 144-45. Thereafter, Petitioner fled to Mexico and did not return to the United States until 2013.¹ Mem. Op. 3, ECF No. 12-9. On February 11, 2013, the state filed an amended motion to proceed to adjudication of guilt based on additional alleged violations of Petitioner's community supervision. Clerk's R. 148-49, ECF No. 12-2. Petitioner pleaded true to the violations on May 29, 2013, the trial court found the allegations to be true, adjudicated Petitioner's guilt, and assessed his punishment at 30 years' confinement in TDCJ. *Id.* at 159. Petitioner appealed the judgment adjudicating guilt, but, on May 23, 2014, the Seventh District Court of Appeals of Texas affirmed the trial court's judgment. Mem. Op. 1, ECF No. 12-9. Petitioner did not file a petition for discretionary review (PDR) in the Texas Court of Criminal Appeals. Resp't's Preliminary Answer, Ex. A, ECF No. 11-1. Therefore, the judgment became final on Monday, June 23, 2014.² TEX. R. APP. P. 68.2(a).

On August 14, 2014, Petitioner filed a petition for writ of certiorari" in the Texas Court of Criminal Appeals, which denied leave to file on September 10, 2014. Pet. for Writ of Cert., ECF No. 12-22; Action Taken, ECF No. 12-14. The United States Supreme Court subsequently denied certiorari on April 20, 2015, and, on July 20, 2015, denied Petitioner's motion for rehearing. Notices, ECF No. 12-19 & 12-20. The filing of his petition for writ of certiorari in the Texas Court of Criminal Appeals did not effect the finality of the judgment adjudicating guilt. A writ of certiorari is not a substitute for a PDR. *See Ex parte Brand*, 822 S.W.2d 636, 638-39 (Tex. Crim. App. 1992).

¹According to Petitioner, he left the United States on February 16, 2005, and "returned on his own recognizance on January 1, 2013." Pet'r's Reply 2, ECF No. 14.

²June 22, 2014, was a Sunday.

On December 10, 2015, Petitioner filed a postconviction state habeas-corpus application challenging the original plea proceedings and the adjudication proceedings, which was denied by the Texas Court of Criminal Appeals on September 11, 2019, without written order on the findings of the trial court.³ Op. 2, ECF No. 12-50; SHR02⁴ 2-19, ECF No. 12-66. Finally, Petitioner asserts that he filed a motion for DNA testing in the trial court on July 8, 2015, which was decided on October 7, 2015. Pet'r's Addendum 149, 175-81, ECF No. 3.

This federal petition for federal habeas relief was filed on January 31, 2020.⁵ Pet. 10, ECF No. 1. Petitioner raises four grounds complaining of ineffective assistance of counsel in the original plea proceedings, the motion-for-new-trial proceedings, and the adjudication proceedings. Pet. at 6-7, ECF No. 1. Respondent asserts that the petition is untimely under the federal statute of limitations and should be dismissed. Resp't's Preliminary Answer 8-14, ECF No. 11.

II. LEGAL DISCUSSION

Title 28, United States Code, § 2244(d) imposes a one-year statute of limitations on federal petitions for writ of habeas corpus filed by state prisoners. Section 2244(d) provides:

(1) A 1-year period of limitations shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitations period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

³Typically, a state prisoner's pro se state habeas application is deemed filed when placed in the prison mailing system. *Richards v. Thaler*, 710 F.3d 573, 578-79 (5th Cir. 2013). However, Petitioner's application does not state the date he placed the document in the prison mailing system.

⁴"SHR02" refers to the record of Petitioner's state habeas proceeding in WR-81,947-02.

⁵Petitioner's pro se federal habeas petition is deemed filed when placed in the prison mailing system. *Spotville v. Cain*, 149 F.3d 374, 377 (5th Cir. 1998).

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitations under this subsection.

28 U.S.C. § 2244(d)(1)-(2).

Contrary to Petitioner's contention, to the extent Petitioner's claims relate to the 2004 original plea proceedings and motion-for-new-trial proceedings, the one-year limitations period began to run under subsection (A), applicable in this case, on the date the order of deferred adjudication became final upon expiration of the time that Petitioner had for filing a notice of appeal on August 11, 2004, triggering limitations, which expired one year later on August 11, 2005.⁶ See TEX. R. APP. P. 26.2(a)(2); *Caldwell v. Dretke*, 429 F.3d 521, 530 (5th Cir. 2005).

Tolling of the limitations period may be appropriate under the statutory-tolling provision in § 2244(d)(2) and/or as a matter of equity. The Court finds no legal support that Petitioner's petition for writ of certiorari filed in the Texas Court of Criminal Appeals operated to toll the limitations period under the statutory tolling provision in § 2244(d)(2). Such writ shall not issue where there is

⁶In order to perfect an appeal from the judgment deferring adjudication, Petitioner was required to file his notice of appeal within 30 days after the judgment was entered. The filing of the motion for new trial did not extend the time for filing his notice of appeal under Texas Rule of Appellate Procedure 26.2(a)(2). See *State v. Davenport*, 866 S.W.2d 767, 770 (Tex. Crim. App. 1993); *Garcia v. State*, 29 S.W.3d 899, 901 (Tex. App.—Houston [14th Dist.] 2000).

a right to appeal. *Ex parte Brand*, 822 S.W.2d at 639. Therefore, Petitioner's petition for a writ of certiorari was not the appropriate vehicle for collaterally challenging the judgment adjudicating guilt. *See Knorpp v. State*, 07-91-0108-CR, 1998 WL 163426, at *6-7 (Tex. App.—Amarillo Apr. 7, 1998, pet. ref'd). Nevertheless, the petition for a writ of certiorari as well as Petitioner's postconviction motion for DNA testing and state habeas application, all of which were filed years after the limitations period had expired, do not operate to toll limitations for purposes of § 2244(d)(2). *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000). Thus, the petition is time-barred as to any such claims unless equitable tolling is justified.

To the extent Petitioner's claims relate to the May 29, 2013, adjudication proceedings, the one-year limitations period began to run under subsection (A) on the date the judgment adjudicating guilt became final upon expiration of the time that Petitioner had for filing a PDR in the Texas Court of Criminal Appeals on Monday, June 23, 2014, 31 days after the court of appeals affirmed the judgment adjudicating guilt, and expired one year later on June 23, 2015, absent any tolling. *See* TEX. R. APP. P. 68.2(a) (providing a PDR "must be filed within 30 days after either the day the court of appeals' judgment was rendered or the day the last timely motion for rehearing . . . was overruled by the court of appeals"⁷). As noted, the Court finds no legal support that Petitioner's petition for writ of certiorari filed in the Texas Court of Criminal Appeals operated to toll the limitations period under the statutory tolling provision in § 2244(d)(2). Nor do Petitioner's postconviction motion for DNA testing and state habeas application, filed on July 8, 2015, and December 10, 2015,

⁷It appears that Petitioner filed two pro se motions for rehearing following the appellate court's decision, however the Court is unable to determine from the record if and when the appellate court ruled on the first motion and the second motion, which was apparently untimely, was dismissed for want of jurisdiction. Docket Sheet 2, ECF No. 12-1; Pet't's Reply 11-12, ECF No. 3.

respectively, after the limitations period had expired, operate to toll the limitations period under that provision. *Scott*, 227 F.3d at 263. Thus, the petition as to any such claims is time-barred unless equitable tolling is justified.

Equitable tolling is permitted only in rare and exceptional circumstances when, although pursuing his rights diligently, an extraordinary factor beyond the petitioner's control prevents him from filing in a timely manner or he can prove that he is actually innocent of the crime for which he was convicted. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013); *Holland v. Florida*, 560 U.S. 631, 649 (2010). A habeas petitioner attempting to overcome the expiration of the statute of limitations by showing actual innocence is required to produce "new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence"—sufficient to persuade the district court that "no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *McQuiggin*, 569 U.S. at 386 (quoting *Schup v. Delo*, 513 U.S. 298, 329 (1995)).

Petitioner has not established that rare and exceptional circumstances prevented him from timely filing his federal petition. Nor has he demonstrated that he is actually innocent of the charged offense. Although actual innocence, if proved, can overcome the statute of limitations, Petitioner's guilty plea arguably precludes any such claim. *See Roots v. Davis*, 4:17-CV-432-O, 2018 WL 6171625, at *2 (N.D. Tex. Nov. 26, 2018) (citing *McQuiggin*, 569 U.S. at 386); *United States v. Vanchaik-Molinar*, 195 Fed. App'x 262, 2006 WL 2474048, at *1 (5th Cir. 2006) ("A voluntary guilty plea waives all non-jurisdictional defects that occurred prior to the plea and precludes consideration of a claim challenging the sufficiency of the evidence.")). In any event, Petitioner has not made a colorable showing that he is actually innocent in light of "new evidence." Petitioner fails

to establish that equitable tolling is warranted.

Absent any applicable tolling, Petitioner's federal petition was due on or before August 11, 2005, as to his claims relevant to the original plea and motion-for-new-trial proceedings, and due on or before June 23, 2015, as to his claims relevant to the adjudication proceedings. His petition filed on January 31, 2020, is therefore untimely in all respects.

III. CONCLUSION

For the reasons discussed, Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 is **DISMISSED** as time-barred. Further, pursuant to 28 U.S.C. § 2253(c), for the reasons discussed herein, a certificate of appealability is **DENIED**.

SO ORDERED on this 13th day of May, 2020.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

STEVE HERBERT SPECKMAN,
Petitioner,

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v.

Civil Action No. 4:20-CV-107-O

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

FINAL JUDGMENT

In accordance with its opinion and order signed this day, the petition of Steve Herbert Speckman pursuant to 28 U.S.C. § 2254 in the above-captioned action is DISMISSED as time-barred.

SO ORDERED on this 13th day of May, 2020.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

SUPREME COURT OF THE
UNITED STATES

Steve Herbert Speckman

Petitioner

v

Bobby Lumpkin - Director

Texas Department of Criminal Justice

Respondent

PETITION FOR WRIT OF CERTIORARI

APPENDIX C

Docket - State Appellate Court

Style: Criminal - Appellant Steve Herbert Speckman

v.Criminal - State of Texas The State of Texas

Case Priority: Regular

Original Proceeding: No

Case Description: Aggravated Assault

Punishment: 30 yrs, TDCJ-4D

BondAmount:

In Jail: False

Trial Court Information

County	Court Name	Case #	Judge	Court Reporter
Tarrant	372nd District Court	0861282D	Honorable David Scott Wisch	Smith, Karen

Transfer Court Information

Transfer From	Transfer In Date	Transfer Case Number	Transfer To	Transfer Out Date
02 COA	07/16/2013	02-13-00274-CR	07 COA	07/17/2013

Companion/ Consolidated Cases

Active	Comp Case Number	Date Filed	Style1	Style2	Consolidated Case
False	07-13-00233-CR	07/17/2013 11:57AM	Steve Herbert Speckman	The State of Texas	

Parties and Attorneys

Party	Party Name	Remarks	Counsel Code	Person Name	Date On	Date Off
Appellant	Speckman, Steve Herbert		Appointed attorney	Leigh W. Davis	07/19/2013	
			Pro Se	Steve Herbert Speckman	03/27/2014	
Criminal - State of Texas	The State of Texas		District attorney	Charles M. Mallin	07/19/2013	01/06/2014
			District attorney	Colby Rideout	01/06/2014	

Interested Entities

Entity Name	Interested Entity Type	Notice	Date On	Date Off
Davis, Leigh W.	AP ATTY	Yes	07/19/2013 12:07PM	
Davis, Leigh W.	AP ATTY	Yes	07/19/2013 12:07PM	
Judge, Administrative	ADMJUD	No	07/19/2013 12:06PM	
Mallin, Charles M.	DT ATTY	Yes	07/19/2013 12:07PM	01/06/2014
Rideout, Colby	DT ATTY	Yes	01/06/2014 9:27AM	
Smith, Karen	RPT	Yes	07/19/2013 12:06PM	
Speckman, Steve Herbert	PRO SE	Yes	03/27/2014 10:25AM	
Wilder, Thomas A.	DT CLK	No	03/07/2014 12:46PM	
Wisch, David Scott	TC JDG	Yes	07/19/2013 12:05PM	09/03/2013
Wisch, David Scott	TC JDG	Yes	09/03/2013	

Events and Opinions

Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
09/29/2016	TRANSFER IN	MT REHEAR DISP	PRO SE	DISMJR			

- Filed 9-19-2016
mFRH

Style: Criminal - Appellant Steve Herbert Speckman

v.Criminal - State of Texas The State of Texas

Events and Opinions

Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
09/29/2016	TRANSFER IN	LTR ISSD	ANT				
09/19/2016	TRANSFER IN	MT REHEAR FLD	PRO SE				
09/13/2016	TRANSFER IN	LTR ISSD					
09/07/2016	TRANSFER IN	LTR FLD	PRO SE				
08/08/2014	TRANSFER IN	MANDATE ISSD					
07/16/2014	TRANSFER IN	LTR ISSD	PRO SE				
07/14/2014	TRANSFER IN	LTR FLD	PRO SE				
06/27/2014	TRANSFER IN	LTR ISSD	BT PAR				
06/24/2014	TRANSFER IN	LTR FLD	PRO SE				
06/16/2014	TRANSFER IN	LTR ISSD	PRO SE				
06/09/2014	TRANSFER IN	MT REHEAR FLD	PRO SE				
06/05/2014 8:24PM	TRANSFER IN	LTR RECD	ATTY				
05/23/2014	TRANSFER IN	MEM OPINION ISSD		AFFIRM			
		<u>Opinion Type</u>	<u>Author</u>				
		Original Memorandum	Justice Mackey K. Hancock				
05/22/2014	TRANSFER IN	SUBMITTED					Brief
05/22/2014	TRANSFER IN	LTR FLD	PRO SE				
05/21/2014	TRANSFER IN	MT WDR ATTY DISP	APP	denied			
05/09/2014 5:31AM	TRANSFER IN	MT WDR ATTY FLD	APP				
05/01/2014	TRANSFER IN	SUBMISSION/ BRIEFS					Brief
04/24/2014	TRANSFER IN	LTR RECD	PRO SE				
03/27/2014	TRANSFER IN	LTR ISSD	PRO SE				
03/14/2014	TRANSFER IN	EXCEPTIONS FLD	PRO SE				
02/03/2014 10:15AM	TRANSFER IN	BRIEF FLD NO	STA				
02/03/2014	TRANSFER IN	AT ISSUE					
01/06/2014	TRANSFER IN	MT EXT BRIEF DISP	STA	granted			
01/03/2014 1:51PM	TRANSFER IN	MT EXT BRIEF FLD	STA				
12/04/2013	TRANSFER IN	BRIEF FLD NO	APP				
11/07/2013	TRANSFER IN	MT EXT BRIEF DISP	APP	granted			
11/01/2013	TRANSFER IN	MT EXT BRIEF FLD	APP				
10/03/2013	TRANSFER IN	MT EXT BRIEF DISP	APP	granted			

filed
out of time
dismissed 9-29-2016



Style: Criminal - Appellant Steve Herbert Speckman

v.Criminal - State of Texas The State of Texas

Events and Opinions

Event Date	Stage	Event	Event Description	Disposition	Grouping	Order Type	Submission
10/03/2013	TRANSFER IN	MT EXT BRIEF FLD	APP				
08/28/2013 4:50PM	TRANSFER IN	RPT RECORD FLD	RPT				
08/01/2013 4:50PM	TRANSFER IN	CLK RECORD FLD	DT CLK				
08/01/2013 10:58AM	TRANSFER IN	EXT RPT RECORD FLD	RPT				
08/01/2013	TRANSFER IN	EXT RPT RECORD DISP	RPT	granted			
07/17/2013	TRANSFER IN	TRANSFER IN					
07/16/2013	FILING	TRANSFER OUT		GRANT			
06/24/2013	FILING	DS FLD	APP				
06/06/2013	FILING	NOA FLD/COA	APP				
05/29/2013	FILING	SENTENCE IMPOSED	TC JDG				

Document Summary

Stage	Location	File Date	Event	File Description	Index	Volume	Page
TRANSFER IN	Event	12/04/2013	BRIEF FLD NO APP	Brief			
TRANSFER IN	Event	11/01/2013	MT EXT BRIEF FLD APP	Motion			
TRANSFER IN	Event	10/03/2013	MT EXT BRIEF FLD APP	Motion			
TRANSFER IN	Event	09/19/2016	MT REHEAR FLD PRO SE	Motion			
TRANSFER IN	Event	09/07/2016	LTR FLD PRO SE	Letter			
TRANSFER IN	Event	08/28/2013 4:50PM	RPT RECORD FLD RPT	Exhibits			
TRANSFER IN	Event	08/28/2013 4:50PM	RPT RECORD FLD RPT	Master Index			
TRANSFER IN	Event	08/28/2013 4:50PM	RPT RECORD FLD RPT	Hearing			
TRANSFER IN	Event	08/08/2014	MANDATE ISSD	Mandate			
TRANSFER IN	Event	08/08/2014	MANDATE ISSD	Mandate			
TRANSFER IN	Event	08/01/2013 10:58AM	EXT RPT RECORD FLD RPT	Motion			
TRANSFER IN	Event	08/01/2013 4:50PM	CLK RECORD FLD DT CLK	Clerk Record			
TRANSFER IN	Event	07/16/2014	LTR ISSD PRO SE	Letter			
FILING	Event	07/16/2013	TRANSFER OUT GRANT	DS			

Style: Criminal - Appellant Steve Herbert Speckman

v.Criminal - State of Texas The State of Texas

Document Summary

Stage	Location	File Date	Event	File Description	Index	Volume	Page
FILING	Event	07/16/2013	TRANSFER OUT GRANT	NOA COA			
FILING	Event	07/16/2013	TRANSFER OUT GRANT	2nd COA Docket Sheet			
TRANSFER IN	Event	07/14/2014	LTR FLD PRO SE	Letter			
TRANSFER IN	Event	06/24/2014	LTR FLD PRO SE	Letter			
TRANSFER IN	Event	06/09/2014	MT REHEAR FLD PRO SE	Motion			
TRANSFER IN	Event	06/05/2014 8:24PM	LTR RECD ATTY	Letter			
TRANSFER IN	Event	05/23/2014	MEM OPINION ISSD AFFIRM	Judgment			
TRANSFER IN	Event	05/23/2014	MEM OPINION ISSD AFFIRM	Judgment			
TRANSFER IN	Opinion	05/23/2014	MEM OPINION ISSD AFFIRM	Opinion		198	2064
TRANSFER IN	Event	05/22/2014	LTR FLD PRO SE	Pro se letter			
TRANSFER IN	Event	05/09/2014 5:31AM	MT WDR ATTY FLD APP	Motion			
TRANSFER IN	Event	04/24/2014	LTR RECD PRO SE	Pro-se Ltr			
TRANSFER IN	Event	03/14/2014	EXCEPTIONS FLD PRO SE	Pro se exception			
TRANSFER IN	Event	02/03/2014 10:15AM	BRIEF FLD NO STA	Brief			
TRANSFER IN	Event	01/03/2014 1:51PM	MT EXT BRIEF FLD STA	Motion			

Calendars

Stage	Set Date	Calendar Name	Reason Set
TRANSFER IN	08/08/2014	STOR	CASE STORE

Fees

Fee Date	Fee Type	Amount	Payment Status	Noticed Date	Payment Type	Party Type	Received From	Check Number
05/23/2014	WEST	\$7.00	NOT PAID			UNK		
05/23/2014	LEXIS	\$7.00	NOT PAID			UNK		
05/23/2014	LOIS	\$7.00	NOT PAID			UNK		

SUPREME COURT OF THE
UNITED STATES

Steve Herbert Speckman
Petitioner

v.

Bobby Lumpkin - Director
Texas Department of Criminal Justice
Respondent

PETITION FOR WRIT OF CERTIORARI

APPENDIX D

Trial Court - Findings of fact and Conclusions of law

NO. C-372-W010662-0861282-A
NO. WR-81,947-02

EX PARTE	§	IN THE 372 nd JUDICIAL
	§	
	§	DISTRICT COURT OF
	§	
STEVE HERBERT SPECKMAN	§	TARRANT COUNTY, TEXAS

STATE'S FIRST AMENDED PROPOSED MEMORANDUM,
FINDINGS OF FACT AND CONCLUSIONS OF LAW

The State proposes the following Memorandum, Findings of Fact and Conclusions of Law regarding the issues raised in the present Application for Writ of Habeas Corpus.

MEMORANDUM

On December 10, 2015, STEVE HERBERT SPECKMAN ("Applicant"), filed his *pro se* application for writ of habeas corpus. On June 7, 2016, the trial court recommended that the requested relief be denied. On August 15, 2016, Applicant moved to dismiss his application for writ of habeas corpus. In a published opinion, the Texas Court of Criminal Appeals denied Applicant's motion; however, allowed him to refile the motion in accordance with the opinion. *See Ex parte Speckman*, 537 S.W.3d 49, 57 (Tex. Crim. App. 2017).

On April 5, 2018, Applicant filed his amended application for writ of habeas corpus alleging his confinement is illegal because (1) his plea was involuntary due to ineffective assistance of counsel, (2) the trial court erred in accepting his plea of

guilty without evidence, (2) he received ineffective assistance of counsel after his plea because counsel failed to move for adjudication, and (3) he received ineffective assistance of counsel during his adjudication hearing. *See* Amended Application, p. 6-11. On September 12,-2018, the Texas Court of Criminal Appeals remanded the proceeding back to the trial court to resolve whether plea counsel advised Applicant that he could be convicted based solely on the victim's written statements and that she would not be questioned at trial. *See* Order, No. WR-81,947-02, Dated Sept. 12, 2018, p. 1-2.

On orders of the trial court, Applicant's attorneys, Mr. Mike Ware, Mr. Mark Scott, and Mr. Danny Burns, have filed affidavits addressing Applicant's claims. In light of Applicant's contentions and the evidence presented in the Writ Transcript, the Court should consider the following proposed findings of fact and conclusions of law:

FINDINGS OF FACT

General Facts

1. Applicant pled guilty, pursuant to a plea agreement, to the first degree felony offense of aggravated sexual assault of a child under 14 years of age on July 12, 2004. *See* Unadjudicated Judgment, No. 0861282D; Written Plea Admonishments ("Admonishments"), No. 0861282D.
2. In accordance with the plea agreement, the trial court placed Applicant on deferred adjudication for a period of ten years. *See* Unadjudicated Judgment.

3. On May 29, 2013, Applicant pled true to the motion to adjudicate and the trial court adjudicated him guilty and sentenced him to thirty years confinement in the Texas Department of Criminal Justice – Institutional Division. *See* Judgment Adjudicating Guilt, No. 0861282D.
4. The Seventh Court of Appeals affirmed the trial court's judgment on May 23, 2014. *See Speckman v. State*, Nos. 07-13-00232-CR, 07-13-00233-CR, 2014 WL 2191997 (Tex. App. – Amarillo May 23, 2014, no pet.) (not designated for publication).

Ineffective Assistance – Original Plea

5. Mr. Michael Logan Ware represented Applicant during the original plea proceedings. *See* Unadjudicated Judgment; Ware Affidavit ("Ware Affidavit"), February 26, 2016, p. 1; Ware Affidavit ("Ware Supplemental Affidavit").
6. Mr. Ware visited with Applicant while he was in Tarrant County Jail. *See* Ware Affidavit, p. 1.
7. Mr. Ware advised Applicant as to how to handle the attempts of CPS, other inmates, and law enforcement to interrogate him and gather facts about the alleged offense. *See* Ware Affidavit, p. 1.
8. Mr. Ware arranged for Applicant to make bail in both this case and his probation revocation case. *See* Ware Affidavit, p. 1.
9. Mr. Ware moved to have a prompt revocation hearing and to have the bond amount lowered. *See* Ware Affidavit, p. 2.
10. Mr. Ware met with Applicant numerous times in Mr. Ware's office to talk about the charges and possible defenses. *See* Ware Affidavit, p. 2.
11. Applicant advised Mr. Ware that the child initiated the sexual activity. *See* Ware Affidavit, p. 2.
12. Mr. Ware advised Applicant that there was no legal defense that the child victim started the sexual relationship. *See* Ware Affidavit, p. 2.

13. Based on his investigation and experience, Mr. Ware concluded that Applicant's wife, the victim's mother, would not be a good witness for Applicant. *See Ware Affidavit, p. 2.*
14. Mr. Ware's decision to not call Applicant's wife as a witness was the result of reasonable trial strategy.
15. Based on his investigation and experience, Mr. Ware concluded that Applicant had a certain way about him that would be offensive to the jury. *See Ware Affidavit, p. 2.*
16. Based on his experience, Mr. Ware believed that cases like these were difficult to win without the convincing testimony of the defendant, regardless of the amount of preparation. *See Ware Affidavit, p. 2.*
17. Mr. Ware advised Applicant of his concerns but explained to Applicant that it was Applicant's decision whether he would testify at trial or plead guilty. *See Ware Affidavit, p. 2.*
18. Mr. Ware's advice to Applicant about whether he should take this case to trial or plead guilty was the result of reasonable trial strategy.
19. Mr. Ware subpoenaed the victim's medical records and school records well before the date of Applicant's plea. *See Ware Affidavit, p. 2.*
20. Mr. Ware does not recall anything from the victim's medical or school records that would have been helpful to Applicant's case. *See Ware Affidavit, p. 2-3.*
21. Applicant provided Mr. Ware with a statement from an associate that stated the associate had a conversation with the victim's mother and she admitted the charges were false and she put the victim up to lying. *See Ware Affidavit, p. 3.*
22. Based on his investigation, Mr. Ware concluded that there were circumstances surrounding the associate's statement that devalued its worth and he decided not to pursue it. *See Ware Affidavit, p. 3.*
23. Mr. Ware thoroughly reviewed the State's file and verbally shared its contents with Applicant. *See Ware Affidavit, p. 3.*

24. Mr. Ware filed several motions on Applicant's behalf. *See Ware Affidavit, p. 3; Criminal Docket Sheet, No. 0861282D.*
25. There is no evidence that the victim had withdrawn and recanted her statements. *See Application; Memorandum.*
26. Applicant's claims that the State withheld evidence that the victim recanted the sexual assault are not credible.
27. Applicant's claims that the State has withheld exculpatory evidence are without merit.
28. Mr. Ware's investigation was the result of reasonable trial strategy.
29. Mr. Ware advised Applicant that there was the possibility that the trial court would revoke Applicant's community supervision in his other case even if Applicant was acquitted in this case. *See Ware Affidavit, p. 4.*
30. Mr. Ware recalls that, as part of this plea agreement, the State agreed to not move to revoke Applicant's community supervision in his other case. *See Ware Affidavit, p. 4.*
31. The State's intent to move to revoke Applicant in his other case based on the allegations in this case was proper.
32. There is no evidence that the State improperly used threats to get Applicant to plead guilty and waive his right to a jury trial in this case.
33. Mr. Ware's advice regarding the possibility that Applicant's community supervision in his other case could still be revoked even if Applicant was acquitted in this case was the result of reasonable trial strategy.
34. There is no evidence that the State made illegal threats.
35. Mr. Ware explained to Applicant all the sex offender registration and sex offender condition requirements. *See Ware Affidavit, p. 4.*
36. Mr. Ware advised Applicant the downside of deferred adjudication. *See Ware Affidavit, p. 4.*

37. Mr. Ware advised Applicant he should not plead guilty if he was not guilty. *See Ware Affidavit, p. 4.*
38. Mr. Ware did not advise Applicant that he could be convicted based solely on the complainant's written statements. *See Ware Supplemental Affidavit.*
39. Mr. Ware did not advise Applicant that victim would not be questioned at trial. *See Ware Supplemental Affidavit.*
40. Mr. Ware allowed Applicant to ask any questions regarding his rights, waivers, and decision to plead before Applicant decided to plead guilty. *See Ware Affidavit, p. 4.*
41. Applicant acknowledged by his signature that he was advised as follows:

If convicted of the above offense, you face the following range of punishment:

FIRST DEGREE FELONY: *Life or any term of not more than 99 years or less than 5 years in the Institutional Division of the Texas Department of Criminal Justice; and in addition, a fine not to exceed \$10,000 may also be assessed.*

...

10. Deferred Adjudication: *Should the Court defer adjudicating your guilt and place you on community supervision, upon violation of any imposed condition, you may be arrested and detained as provided by the law. You will then be entitled to a hearing limited to the determination by the Court, without a jury, whether to proceed with an adjudication of your guilt upon the original charge. No appeal may be taken from this determination. Upon adjudication of your guilt, the Court may assess your punishment anywhere within the range provided by law for this offense.*

See Admonishments, p. 1, 2, 4 (emphasis added).

42. Applicant was properly admonished that he could be sentenced to the full range of punishment, five to ninety-nine years, if adjudicated.
43. Mr. Ware's advice was proper.

44. Mr. Ware's affidavits are credible and supported by the record.
45. Mr. Ware's advice fell within the range of competence demanded of attorneys in criminal cases.
46. There is no credible evidence that Mr. Ware's representation fell below an objective standard or reasonableness.
47. Applicant presents no credible evidence that the outcome of the trial proceeding would have been different but for the alleged misconduct.
48. There is no evidence that a reasonable likelihood exists that the outcome of the trial proceeding would have been different but for the alleged misconduct.

CONCLUSIONS OF LAW

General Writ Law

1. In a habeas corpus proceeding, the burden of proof is on the applicant. *Ex parte Rains*, 555 S.W.2d 478, 481 (Tex. Crim. App. 1977). An applicant "must prove by a preponderance of the evidence that the error contributed to his conviction or punishment." *Ex parte Williams*, 65 S.W.3d 656, 658 (Tex. Crim. App. 2001).
2. Relief may be denied if the applicant states only conclusions, and not specific facts. *Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000). In addition, an applicant's sworn allegations alone are not sufficient to prove his claims. *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex. Crim. App. 1988).

Ineffective Assistance of Counsel – Original Plea

3. The two-prong test enunciated in *Strickland v. Washington* applies to ineffective assistance of counsel claims in non-capital cases. *Hernandez v. State*, 988 S.W.2d 770, 771 (Tex. Crim. App. 1999). To prevail on his claim of ineffective assistance of counsel, the applicant must show counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability the results of the proceedings would have been

different in the absence of counsel's unprofessional errors. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

4. The Court of Criminal Appeals will presume that trial counsel made all significant decisions in the exercise of reasonable professional judgment. *See Delrio v. State*, 840 S.W.2d 443, 447 (Tex. Crim. App. 1992).
5. The totality of counsel's representation is viewed in determining whether counsel was ineffective. *See Cannon v. State*, 668 S.W.2d 401, 404 (Tex. Crim. App. 1984).
6. Support for Applicant's claim of ineffective assistance of counsel must be firmly grounded in the record. *See Johnson v. State*, 691 S.W.2d 619, 627 (Tex. Crim. App. 1984), *cert. denied*, 474 U.S. 865 (1985).
7. When a defendant complains that his plea was not voluntary due to ineffective assistance of counsel, "the voluntariness of the plea depends on (1) whether counsel's advice was within the range of competence demanded of attorneys in criminal cases and if not, (2) whether there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Ex parte Moody*, 991 S.W.2d 856, 857-58 (Tex. Crim. 1999) (citations omitted).
8. There is a presumption of regularity with respect to guilty pleas under Texas Code of Criminal Procedure art. 1.15. *Ex parte Wilson*, 716 S.W.2d 953, 956 (Tex. Crim. App. 1986).
9. Counsel's advice to plead guilty was proper.
10. Counsel's decision to not present questionable evidence regarding admissions by Applicant's wife that she made up the charges was the result of reasonable trial strategy.
11. Applicant has failed to prove that the State withheld exculpatory evidence.
12. Counsel's investigation was the result of reasonable trial strategy.
13. Applicant has failed to prove that counsel was not prepared for trial.

14. Applicant has failed to prove that he was not properly advised regarding the consequences of his plea.
15. Applicant has failed to prove that counsel improperly advised him regarding the impact of the victim's statements.
16. Applicant has failed to prove that counsel improperly advised him that the victim would not be subjected to cross-examination.
17. Applicant has failed to prove that his attorney's representation fell below an objective standard of reasonableness.
18. A party fails to carry his burden to prove ineffective assistance of counsel where the probability of a different result absent the alleged deficient conduct sufficient to undermine confidence in the outcome is not established. *See Washington v. State*, 771 S.W.2d 537, 545 (Tex. Crim. App.), *cert. denied*, 492 U.S. 912 (1989).
19. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. *If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.*" *Strickland v. Washington*, 466 U.S. 668, 697, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (emphasis added).
20. Applicant has failed to show that there is a reasonable probability that the result of the proceeding would have been different had counsel advised him more.
21. Applicant has failed to show that there is a reasonable probability that the result of the proceeding would have been different had counsel investigated more.
22. Applicant has failed to show that there is a reasonable probability that the result of the proceeding would have been different had counsel prepared more.
23. Applicant has failed to show that there is a reasonable probability that, but for the alleged acts of misconduct, the result of the proceeding would have been different.

24. Applicant has failed to prove that he received ineffective assistance of trial counsel.
25. Applicant has failed to prove that his plea was involuntary due to ineffective assistance of counsel.
26. Applicant has failed to overcome the presumption that his plea was regular.
27. Applicant's plea was freely, voluntarily, and knowingly made.
28. This Court recommends that Applicant's application be **DENIED**.

WHEREFORE, the State prays that this Court adopt these Proposed Findings of Fact and Conclusions of Law and recommend that Applicant's application be **DENIED**.

Respectfully submitted,

SHAREN WILSON
Criminal District Attorney
Tarrant County

JOE W. SPENCE
Chief, Post-Conviction

/s/ Andréa Jacobs
Andréa Jacobs
Asst. Crim. District Attorney
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Phone: 817/884-1687
Facsimile: 817/884-1672
Ccaappellatealerts@tarrantcountytex.gov

CERTIFICATE OF SERVICE

A true copy of the above has been mailed to Applicant, Mr. Steve Herbert Speckman, by and through his attorney of record, Mr. Jim Gibson, jim@jimgibsonlaw.com, 909 Throckmorton Street, Fort Worth, Texas 76102 on the 26th day of March, 2019.

/s/ Andréa Jacobs
Andréa Jacobs

CERTIFICATE OF COMPLIANCE

I certify that the total number of words in this State's Proposed Findings of Fact and Conclusions of Law is **2785** words as determined by Microsoft Office Word 2016.

/s/ Andréa Jacobs
Andréa Jacobs

APR 09 2019

NO. C-372-W010662-0861282-A
NO. WR-81,947-02

TIME 11:09 AM
BY [Signature] DEPUTY

EX PARTE

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IN THE 372nd JUDICIAL

DISTRICT COURT OF

STEVE HERBERT SPECKMAN

TARRANT COUNTY, TEXAS

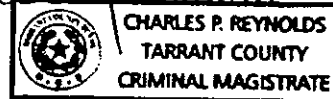
FINDINGS AND ORDER

The Court adopts the State's First Amended Memorandum, Findings of Fact and Conclusions of Law as its own and recommends that the relief STEVE HERBERT SPECKMAN ("Applicant") requests should be **DENIED**.

The Court further orders and directs the Clerk of this Court to furnish a copy of the Court's findings to Applicant, Mr. Steve Herbert Speckman, by and through his attorney of record, Mr. Jim Gibson, jim@jimgibsonlaw.com, 909 Throckmorton Street, Fort Worth, Texas 76102 (or to Applicant's most recent address), and to the post-conviction section of the Criminal District Attorney's Office.

SIGNED AND ENTERED this 8th day of April, 2019.

JUDGE PRESIDING



SUPREME COURT OF THE
UNITED STATES

Steve Herbert Speckman
Petitioner

v

Bobby Lumpkin - Director
Texas Department of Criminal Justice
Respondent

PETITION FOR WRIT OF CERTIORARI

APPENDIX E

Remand Order - Court of Criminal Appeals
State Habeas Corpus



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,947-02

EX PARTE STEVE HERBERT SPECKMAN, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 0861282-A IN THE 372ND 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to aggravated sexual assault and after being adjudicated guilty was sentenced to thirty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Speckman v. State*, No. 07-13-00232-CR (Tex. App.—Amarillo May 23, 2014) (not designated for publication).

In an amended application, Applicant contends, among other things, that guilty-plea counsel told him that he could be convicted at trial based solely on the complainant's written statements and

that she would not have to be questioned at trial.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Crawford v. Washington*, 541 U.S. 36 (2004); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall order guilty-plea counsel to respond to the above claim. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

Applicant appears to be represented by counsel. If he is not and the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent him at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make further findings of fact and conclusions of law as to whether counsel's advice was deficient and but for his alleged deficient advice, Applicant would have insisted on a trial. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time must be

requested by the trial court and shall be obtained from this Court.

Filed: September 12, 2018

Do not publish

SUPREME COURT OF THE
UNITED STATES

Steve Herbert Speckman

Petitioner

v

Bobby Lumpkin - Director

Texas Department of Criminal Justice

Respondent

PETITION FOR WRIT OF CERTIORARI

APPENDIX F

Final Opinion - Court of Criminal Appeals

State Habeas Corpus



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,947-02

EX PARTE STEVE HERBERT SPECKMAN, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. C-372-010662-0861282-A IN THE 372ND DISTRICT COURT
FROM TARRANT COUNTY

Per curiam.

OPINION

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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to aggravated sexual assault and was sentenced to thirty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Speckman v. State*, No. 07-13-00232-CR (Tex. App.—Amarillo May 23, 2014) (not designated for publication).

Applicant contends, among other things, that trial counsel rendered his guilty plea involuntary. After the trial court ordered an affidavit from counsel, adopted the State's proposed findings of fact and conclusions of law, and recommended that we deny relief, Applicant filed a

motion in this Court to dismiss his application. We filed and set his case for submission, ultimately denied his motion to dismiss, and granted his motion to stay the proceedings so that he could amend his application. *Ex parte Speckman*, 537 S.W.3d 49 (Tex. Crim. App. 2017); *Ex parte Speckman*, No. WR-81,947-02 (Tex. Crim. App. Dec. 6, 2017) (not designated for publication).

After Applicant filed amended applications on April 5 and 10, 2018, we remanded one of his amended claims for a response from guilty-plea counsel and further findings of fact and conclusions of law. *Ex parte Speckman*, No. WR-81,947-02 (Tex. Crim. App. Sept. 12, 2018) (not designated for publication). On remand, counsel responded in a sworn affidavit and the trial court made further findings of fact and concluded that counsel's conduct was not deficient. On May 6, 2019, Applicant then filed in this Court a motion to dismiss or stay the proceedings, noting that he had filed a supplemental application in Tarrant County. On May 23, we received this application.

Based on the trial court's findings of fact and conclusions of law and this Court independent review of the record and Applicant's original, amended, and supplemental applications in this proceeding, we deny relief.

Filed: September 11, 2019
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