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9/29/2021

SWANSON, EDWARD F. AKA SWANSON, EDWARD FITZGERALD Tr. Ct. No.
2008-421,735-B WR-83,894-02

On this day, the application for 11-07 Writ of Habeas Corpus has been received and presented to the Court.

Deana Williamson, Clerk

B-19
EDWARD F. SWANSON
JESTER III UNIT - TDC # 1570552
3 JESTER ROAD
RICHMOND, TX 77406

IMIWNAB 77406



OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
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PENALTY FOR
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10/13/2021

SWANSON, EDWARD F. AKA SWANSON, EDWARD FITZGERALD Tr. Ct. No.
2008-421,735-B WR-83,894-02

This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing and on the Court's independent review of the record.

Deana Williamson, Clerk

B-19
EDWARD F. SWANSON
JESTER III UNIT - TDC # 1570552
3 JESTER ROAD
RICHMOND, TX 77406

IMIWNAB 77406



State Bar No. 24047280
P. O. Box 10536
Lubbock, Texas 79408
(806) 775-1100
FAX (806) 775-7930
E-mail: JFord@lubbockcounty.gov

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing State's proposed findings of fact and conclusions of law in the post-conviction habeas proceeding in the above-styled and -numbered cause has been delivered to Applicant by placing a copy in the United States Mail, addressed to Edward F. Swanson, TDCJ-CID #01570552, Jester III Unit, 3 Jester Road, Richmond, Texas 77406 on September 28, 2021.

K. SUNSHINE STANEK
Criminal District Attorney
State Bar No. 24027884

By: /s/ Jeffrey S. Ford
Jeffrey S. Ford

EX PARTE § IN THE 137TH DISTRICT COURT

 § OF

EDWARD F. SWANSON § LUBBOCK COUNTY, TEXAS

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Applicant alleges in his first ground for relief that the indictment's language was vague and ambiguous. Applicant was charged by indictment with the offense of robbery. Applicant filed a motion to quash indictment prior to the start of trial, which was denied following a hearing, but did not thereafter raise a challenge to the language of the indictment on appeal. Because Applicant's challenge to the indictment could have been raised on appeal, Applicant cannot raise his indictment challenge on habeas review.

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Applicant alleges in his second ground for relief that robbery is not a crime of violence in light of the U.S. Supreme Court's *Sessions v. Dimaya* opinion, and therefore his indictment must be dismissed. The Court finds and concludes that Applicant has not alleged a cognizable ground for relief in this ground. The *Dimaya* case addressed the Immigration and Nationality Act's "crime of violence" provision and does not have any application since the robbery offense here does not have a "crime of violence" provision.

The Court recommends that the Court of Criminal Appeals deny Applicant's Ground Two.

Applicant alleges in his third and fourth grounds for relief that the presiding judge in Applicant's case, Judge David Gleason, was biased against him and improperly directed a verdict of guilt. The Court finds and concludes that Applicant has not shown that the presiding judge in his case was biased against him. Judge Gleason presided over a jury trial for a robbery offense based on the language of the indictment charging Applicant with a robbery offense. Following the conclusion of the guilt-innocence phase of trial, Judge Gleason gave the jury the court's charge, after which both parties gave closing arguments. Judge Gleason did not, however, direct the jury to vote for guilt.

The Court recommends that the Court of Criminal Appeals deny Applicant's Grounds Three and Four.

Applicant alleges in his fifth ground for relief that trial counsel was ineffective due to his alleged failure to challenge the language of the indictment and in allowing him to be convicted of aggravated robbery. To be entitled to relief, Applicant must first show that trial counsel's representation was deficient, which requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. If a showing of deficiency is made, Applicant must also show prejudice by showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. The Court finds and concludes that Applicant has not met his burden of proving ineffective assistance of counsel. Applicant was only found guilty of a robbery offense, not aggravated robbery. Additionally, trial counsel did file a motion to quash based on notice grounds. Applicant has not shown that trial counsel's performance was deficient.

Since Applicant has not met both prongs of the *Strickland* test for showing ineffective assistance of trial counsel in his claims of alleged ineffectiveness, the Court recommends that the Court of Criminal Appeals deny Applicant's Ground Five.

The Clerk of this Court shall promptly submit to the Clerk of the Court of Criminal Appeals a copy of the application, any filed answers, and all exhibits and memoranda filed by any party or participant, together with these Findings of Fact and Conclusions of Law.

SIGNED AND ENTERED THIS _____ day of _____, 2021.

Respectfully submitted,

Hon. John "Trey" J. McClendon III
Judge Presiding

Cause No. 2008-421,735-B

EX PARTE

§ IN THE 137TH DISTRICT COURT

§ OF

EDWARD F. SWANSON

§ LUBBOCK COUNTY, TEXAS

STATE'S PROPOSED

**CONVICTING COURT’S FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDATIONS TO THE COURT OF CRIMINAL
APPEALS ON APPLICANT’S ART. 11.07 APPLICATION FOR WRIT OF
HABEAS CORPUS**

TO THE HONORABLE COURT:

The State of Texas, by and through the undersigned assistant district attorney, files the attached proposed findings of fact and conclusions of law in the above-styled and -numbered cause, and respectfully requests that the Court review and adopt the findings and conclusions proposed by the State as the Court's own findings and conclusions required under Art. 11.07, Tex. Code Crim. Proc.

Respectfully submitted,

K. SUNSHINE STANEK
Criminal District Attorney
State Bar No. 24027884

By: /s/ Jeffrey S. Ford
Jeffrey S. Ford
Assistant Criminal District Attorney
Lubbock County, Texas

Cause No. 2008-421,735-B

EX PARTE

§ IN THE 137TH DISTRICT COURT

§ OF

EDWARD F. SWANSON

§ LUBBOCK COUNTY, TEXAS

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

After a review of the Application and the district clerk's file, this Court finds that Applicant raises no issue upon which relief can be granted under TEX. CODE CRIM. PROC. ANN. art. 11.07. Consequently, this Court recommends that the application be denied.

Applicant alleges in his first ground for relief that the indictment's language was vague and ambiguous. Applicant was charged by indictment with the offense of robbery. Applicant filed a motion to quash indictment prior to the start of trial, which was denied following a hearing, but did not thereafter raise a challenge to the language of the indictment on appeal. Because Applicant's challenge to the indictment could have been raised on appeal, Applicant cannot raise his indictment challenge on habeas review.

The Court recommends that the Court of Criminal Appeals deny Applicant's Ground One.

Applicant alleges in his second ground for relief that robbery is not a crime of violence in light of the U.S. Supreme Court's *Sessions v. Dimaya* opinion, and therefore his indictment must be dismissed. The Court finds and concludes that Applicant has not alleged a cognizable ground for relief in this ground. The *Dimaya* case addressed the Immigration and Nationality Act's "crime of violence" provision and does not have any application since the robbery offense here does not have a "crime of violence" provision.

The Court recommends that the Court of Criminal Appeals deny Applicant's Ground Two.

Applicant alleges in his third and fourth grounds for relief that the presiding judge in Applicant's case, Judge David Gleason, was biased against him and improperly directed a verdict of guilt. The Court finds and concludes that Applicant has not shown that the presiding judge in his case was biased against him. Judge Gleason presided over a jury trial for a robbery offense based on the language of the indictment charging Applicant with a robbery offense. Following the conclusion of the guilt-innocence phase of trial, Judge Gleason gave the jury the court's charge, after which both parties gave closing arguments. Judge Gleason did not, however, direct the jury to vote for guilt.

The Court recommends that the Court of Criminal Appeals deny Applicant's Grounds Three and Four.

Applicant alleges in his fifth ground for relief that trial counsel was ineffective due to his alleged failure to challenge the language of the indictment and in allowing him to be convicted of aggravated robbery. To be entitled to relief, Applicant must first show that trial counsel's representation was deficient, which requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. If a showing of deficiency is made, Applicant must also show prejudice by showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. The Court finds and concludes that Applicant has not met his burden of proving ineffective assistance of counsel. Applicant was only found guilty of a robbery offense, not aggravated robbery. Additionally, trial counsel did file a motion to quash based on notice grounds. Applicant has not shown that trial counsel's performance was deficient.

Since Applicant has not met both prongs of the *Strickland* test for showing ineffective assistance of trial counsel in his claims of alleged ineffectiveness, the Court recommends that the Court of Criminal Appeals deny Applicant's Ground Five.

The Clerk of this Court shall promptly submit to the Clerk of the Court of Criminal Appeals a copy of the application, any filed answers, and all exhibits and memoranda filed by any party or participant, together with these Findings of Fact and Conclusions of Law.

SIGNED AND ENTERED THIS _____ day of _____, 2021.

Respectfully submitted,

Hon. John "Trey" J. McClendon III
Judge Presiding