

SUPREME COURT OF ARKANSAS

No. CV-20-723

DOUGLAS D. TRUE

APPELLANT

V.

DEXTER PAYNE, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered: September 16, 2021

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT
[NO. 35CV-20-585]

HONORABLE JODI RAINES
DENNIS, JUDGE

AFFIRMED.

JOHN DAN KEMP, Chief Justice

Appellant Douglas D. True pleaded guilty to two counts of capital murder in December 2014 for which he was sentenced to life imprisonment without parole. True now appeals the denial and dismissal of a petition for writ of habeas corpus filed in the county of his incarceration pursuant to Arkansas Code Annotated section 16-112-101 (Repl. 2016). True contends that the circuit court failed to comply with Rules 24.5, 24.6, and 24.7 of the Arkansas Rules of Criminal Procedure, and because there is no record of the guilty-plea proceedings, his judgment and commitment order is invalid on its face. Because True has failed to demonstrate that he was entitled to issuance of the writ, we affirm the circuit court's order.

I. Facts

After True pleaded guilty and the judgment was entered, he timely sought postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. True argued

APPENDIX A

that his trial counsel was ineffective for failing to fully investigate and develop a theory of defense and instead pressured him to plead guilty to avoid imposition of the death penalty; that counsel failed to order a mental evaluation; and that his guilty plea was involuntary in that counsel did not inform him that the prosecutor had not yet given notice of the State's intent to seek the death penalty. *True v. State*, 2017 Ark. 323, 532 S.W.3d 70. In response to filing the postconviction petition, counsel was appointed, a mental evaluation was completed, and an evidentiary hearing conducted. *Id.*, 532 S.W.3d 70. The circuit court denied relief, and this court determined that there was no showing that the trial court clearly erred when it denied relief and affirmed the order. *Id.*, 532 S.W.3d 70.

II. Writ of Habeas Corpus

A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacked jurisdiction over the case. *Foreman v. State*, 2019 Ark. 108, 571 S.W.3d 484. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). When the trial court has personal jurisdiction over the appellant and also has jurisdiction over the subject matter, the court has authority to render the judgment. *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989).

A petitioner who does not allege his or her actual innocence and proceed under Act 1780 of 2001 must plead either the facial invalidity of the judgment or the lack of jurisdiction by the circuit court and make a showing, by affidavit or other evidence, of probable cause to believe that he or she is being illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Proceedings for the writ are not intended to require an extensive review of

the record of the trial proceedings, and the circuit court's inquiry into the validity of the judgment is limited to the face of the commitment order. *Jones v. Kelley*, 2020 Ark. 290. Unless the petitioner can show that the trial court lacked jurisdiction or that the commitment order was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Fields v. Hobbs*, 2013 Ark. 416.

A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. *Hobbs v. Gordon*, 2014 Ark. 225, 434 S.W.3d 364. A decision is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Ratliff v. Kelley*, 2018 Ark. 105, 541 S.W.3d 408.

III. *Claim for Relief*

On appeal, True contends that because there is no record of the guilty-plea proceedings to support what is contained in the judgment and commitment order, his judgment and commitment order is invalid on its face. Specifically, he contends that the trial court failed to comply with Rules 24.5 and 24.6 that require the court to ascertain whether a plea was voluntary, determine whether the plea was the result of a plea agreement, and establish a factual basis for the plea.

When a defendant enters a plea of guilty, the plea is his trial. *Trammel v. Kelley*, 2020 Ark. 342, 610 S.W.3d 158. A habeas corpus proceeding does not allow a prisoner to retry his case or to reconsider the decision to enter a guilty plea. *Crockett v. Kelley*, 2020 Ark. 26. Claims of an involuntary plea or of improper plea procedures do not raise a question of a

void or illegal sentence that may be raised in a habeas proceeding.¹ *Wolfe v. Payne*, 2021 Ark. 87, 622 S.W.3d 625.

True fails to state a basis for issuance of the writ. To the extent that True challenges the voluntariness of his guilty plea on the basis of the ineffectiveness of trial counsel, his claim likewise fails. Ineffective-assistance-of-counsel claims are not cognizable in habeas corpus proceedings. *Id.*, 622 S.W.3d 625. When a convicted defendant desires to challenge a guilty plea after entry of judgment on ineffective-assistance-of-counsel grounds, his or her remedy is to timely file a Rule 37.1 petition for postconviction relief. *Id.*, 622 S.W.3d 625. Thus, we hold that the circuit court did not clearly err when it denied and dismissed True's habeas petition.

Affirmed.

¹True challenged the voluntariness of his guilty pleas in his Rule 37.1 postconviction petition and appeal. This court found that the trial court did not clearly err when it found that True's guilty plea was voluntarily and intelligently entered upon the advice of competent counsel. *True*, 2017 Ark. 323, 532 S.W.3d 70.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
ELEVENTH JUDICIAL DISTRICT, WEST - FIFTH DIVISION

DOUGLAS TRUE
Inmate # 159617

PETITIONER

v.

No. 35CV-20-585-5

DEXTER PAYNE, Director,
Arkansas Department of Corrections

RESPONDENT

AMENDED ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

On this day comes on for consideration the petition for writ of habeas corpus filed on August 26, 2020. From the examination of the pleadings and review of applicable law, the Court finds as follows:

On December 17, 2014, petitioner entered a negotiated plea of guilty to two counts of capital murder and was sentenced to concurrent terms of life without the possibility of parole in the Arkansas Department of Corrections.

Petitioner seeks habeas relief claiming that his plea was not knowingly or voluntarily entered nor was there a factual basis to support a plea of guilty. Petitioner alleges that the official record of his plea hearing cannot be located; therefore, once he claims that his plea was not knowingly and voluntarily entered, the burden shifts to the State to establish the validity of the plea. He continues that without the transcript the State cannot meet its burden and his convictions and sentences should be declared void. Petitioner states he has previously been unsuccessful based on the same allegations in his Rule 37 proceeding and on direct appeal. It appears he is making the same claims in a pending federal habeas case.

53

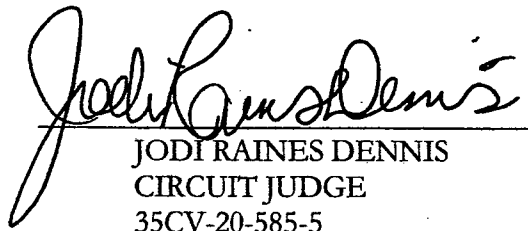
Page 1 of 2

APPENDIX B

The petitioner is attacking his guilty plea. A challenge to a plea of guilty must be filed pursuant to Arkansas Rule of Criminal Procedure 37. *Webb v. State*, 365 Ark. 22, 223 S.W.3d 796 (2006). As noted, he was denied relief in his Rule 37 petition. There is no provision permitting additional petitions. A petition for a writ of habeas corpus is not a substitute for post-conviction relief nor does it provide an opportunity to retry a case. *Wesson v. Hobbs*, 2014 Ark. 285 (per curiam); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam).

The petition is DENIED and DISMISSED.

IT IS SO ORDERED this 28th day of October 2020.


JODI RAINES DENNIS
CIRCUIT JUDGE
35CV-20-585-5

cc: Mr. Douglas True
Inmate # 159617
Arkansas Department of Correction
Tucker Maximum Security Unit
2501 State Farm Road
Tucker, AR 72168-8713

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
CIVIL DIVISION

DOUGLAS D. TRUE

PETITIONER

VS.

CAUSE NO. _____

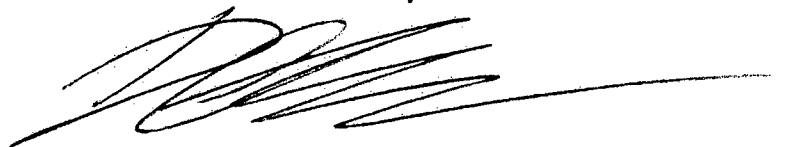
DEXTER PAYNE, Director,

Arkansas Dept. of Corrections

RESPONDENT

PETITION FOR A WRIT OF HABEAS CORPUS
(ACA § 16-112-101-123)

Respectfully Submitted,



Douglas D. True, pro se

ADC #159617

Maximum Security Unit

2501 State Farm Road

Tucker, Arkansas 72168

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
CIVIL DIVISION

DOUGLAS D. TRUE

PETITIONER

VS.

CAUSE NO. _____

DEXTER PAYNE, Director,

Arkansas Dept. of Corrections

RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS

(ACA § 16-112-101-123)

COMES NOW the Petitioner, Douglas D. True, prose,
pursuant to ACA § 16-112-101-123, and petitions this Court
for a writ of habeas corpus vacating his convictions for
(2) two counts of capital murder. In support of his petition,
petitioner states the following:

1. That petitioner is currently in custody of the
Arkansas Department of Corrections, and being housed at
the Maximum Security Unit located at 2501 State Farm
Road, Tucker, Arkansas, 72168.
2. That Dexter Payne is the Director of the Arkansas
Department of Correction, and is the respondent named
herein.
3. That petitioner is currently serving a sentence
of life without the possibility of parole, imposed by

the Circuit Court of Sebastian County, Arkansas, having been convicted and sentenced on December 17, 2014 for (2) two counts of capital murder.

4. That said convictions were based on an information filed against the petitioner on or about July 28, 2014, accusing the petitioner of (2) two counts of capital murder in violation of ACA § 5-10-101, a Class Y felony.

5. That petitioner is being held unlawfully and this Court has jurisdiction pursuant to the Arkansas Constitution and ACA § 16-112-101, et seq.

6. That petitioner is being held pursuant to a conviction and commitment that is invalid on its face, and petitioner bases his contention upon the following facts:

FACTUAL AND LEGAL BACKGROUND

7. On December 17, 2014, Petitioner pled guilty to (2) two counts of capital murder and was subsequently sentenced to life without the possibility of parole in the Arkansas Department of Corrections. See App. A.

8. Petitioner then filed a timely petition for post-conviction relief pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure (2014), alleging multiple instances of ineffective assistance of counsel

related to trial counsel's inadequate investigation prior to advising a guilty plea, as well as his failure to request a pre-plea mental health evaluation and competency determination. Petitioner further stated that his guilty plea was not knowing, voluntary, or intelligent due to the ineffective assistance of trial counsel.

9. Petitioner was denied post-conviction relief after a hearing on August 22, 2016, and the judgment was affirmed on appeal by the Arkansas Supreme Court on November 30, 2017.

10. On July 18, 2018, petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Arkansas.

11. The petition alleged several instances of the ineffective assistance of trial counsel as well as the fact that petitioner's guilty plea was not knowing, voluntary, or intelligent as a result.

12. On September 13, 2018, counsel for respondent Wendy Kelley, Director of the Arkansas Dept. of Correction, filed a second motion for extension of time to file a response to the district court's order to show cause. See App. B.

13. The extension of time was requested in part in an attempt to locate a transcript of the petitioner's

guilty plea proceedings that took place on December 17, 2014.

14. On October 5, 2018, Petitioner wrote a letter to Attorney Joseph C. Self, whom his family had retained in order to gather the complete record in his case, which petitioner had previously been denied access to by multiple government agencies.

15. In the letter, petitioner asked Mr. Self if a missing transcript would have any bearing on his then-pending federal habeas corpus action.

16. On October 31, 2018, Mr. Self replied to petitioner's letter, and in it he essentially established that a record of the guilty plea proceedings did not exist. Mr. Self stated that the Sebastian County Circuit Court reporter had contacted him to inquire if he possessed a transcript of the plea proceedings, which he did not. See App. C, App. D.

17. The court reporter also informed Mr. Self that the prosecuting attorney's office did not have a transcript either. App. C and D.

18. During the same time period from September to October 2018, Petitioner conducted his own research via the prison law library to determine whether or not the missing transcript would have any positive effect on his federal habeas corpus action.

19. Upon the conclusion of his research, petitioner discovered Rule 24.7 of the Arkansas Rules of Criminal

Procedure, which states that "the court shall cause a verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere to be made and preserved."

20. Petitioner also discovered the Arkansas Supreme Court case Reed v. State, 276 Ark. 318, 635 S.W. 2d 472 (1982), which held that in the absence of the required record, the state shouldered the burden of proving that petitioner's plea was voluntarily and intelligently made.

21. The Reed case then led petitioner to a similar case from the Supreme Court of the United States, which held that there was reversible error where the record did not disclose that the defendant voluntarily and understandingly entered his pleas of guilty. See Boykin v. Alabama, 395 U.S. 238, 84 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

22. Because the Arkansas Rules of Criminal Procedure do not provide for a second or successive petition for post-conviction relief, petitioner elected to notify the federal district court of the lack of the required record of his plea proceedings in his November 28, 2018 reply to respondent Wendy Kelley's response to order to show cause.

23. On February 11, 2019, federal magistrate judge Patricia Harris issued a report and recommend-

ation that petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied.

24. In her report, Judge Harris did not address the issue of the missing record in relation to petitioner's contention that his plea was not voluntarily and intelligently made.

25. On March 4, 2019, federal district judge Billy Roy Wilson accepted the magistrate's report and recommendation and denied petitioner relief as well as a certificate of appealability.

26. On April 9, 2019, petitioner filed a timely notice of appeal and an application for a certificate of appealability with the Eighth Circuit Court of Appeals. Both were summarily denied without opinion on July 26, 2019.

27. Petitioner's subsequent petition for rehearing/rehearing en banc was denied August 23, 2019.

28. On November 20, 2019, petitioner filed a petition for writ of certiorari with the Supreme Court of the United States alleging, inter alia, that the lower courts had continuously bypassed the issue of the missing transcript of petitioner's guilty plea proceedings.

29. The Court denied the petition on January 27, 2020, and a petition for rehearing was denied on April 27, 2020.

30. Because petitioner has no other non-futile state remedies available to him to address this claim, petitioner now presents his claim in the instant petition.

REASONS FOR GRANTING THE WRIT

A. BECAUSE THE RECORD DOES NOT DEMONSTRATE THAT THE TRIAL COURT COMPLIED WITH RULE 24 OF THE ARKANSAS RULES OF CRIMINAL PROCEDURE IN ACCEPTING PETITIONER'S GUILTY PLEA, AND BECAUSE IT DOES NOT REFLECT THAT PETITIONER'S PLEA WAS VOLUNTARILY AND INTELLIGENTLY MADE, THE RESULTING JUDGMENT AND COMMITMENT IS INVALID ON ITS FACE AND MUST BE REVERSED.

31. RULES 24.5 and 24.6 of the Arkansas Rules of Criminal Procedure require that the trial judge himself ascertain whether or not a plea of guilty is voluntary, as well as determine whether the plea of guilty was the result of a plea agreement, and if so, require that such agreement be stated. The trial judge must also determine whether there was a factual basis for the plea. See Irons v. State, 267 Ark. 469, 591 S.W. 2d 650 (1980); Reed v. State,

276 Ark. 318, 635 S.W. 2d 472 (1982).

32. In McDonnell v. State, 288 Ark. 629, 708 S.W. 2d 613 (1986), the Supreme Court held that before accepting a plea of guilty the trial court must first address the defendant personally, informing him of, and determining that he understands the nature of the charge and, among other things, the mandatory minimum and possible maximum sentence. See Rule 24.4, Arkansas Rules of Criminal Procedure; See also McCarthy v. United States, 394 U.S. 459, 89 S.Ct. 1166, 22 L. Ed. 2d 418 (1969), "because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."

33. Rule 24.7 of the Arkansas Rules of Criminal Procedure requires that "the court shall cause a verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere to be made and preserved." The trial court in petitioner's case neglected to do so. See App. C and D.

34. The Supreme Court held in Reed that in the absence of the required record, the state has the burden of proving that the guilty plea was voluntarily and intelligently entered. Id. See also Dorsey v. State, 2012 Ark. App 183, 393 S.W. 3d 578 (2012).

35. In Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d. 274, the Supreme Court of the United States stated that "it was error, plain on the face of the record, for the trial judge to accept petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary." (emphasis added)

36. The Court further held that a waiver of federal constitutional rights, such as the right to trial by jury, the right to confront one's accusers, and the right against compulsory self incrimination, all of which are involved when a defendant pleads guilty in a state criminal trial, cannot be presumed from a silent record. *Id.* See also 5th and 14th Amendments to the United States Constitution.

37. The same conclusion must be reached in the petitioner's case. Although the commitment order records a knowing, voluntary, and intelligent plea of guilty, the Supreme Court has ruled that a judgment and commitment order was not "sufficient to demonstrate" that, upon personal inquiry by the trial court, the defendant entered a voluntary plea of guilty, in accordance with the applicable requirements of criminal procedure rules. Dorsey v. State, 2012 Ark. App. 183.

38. Because there is no record of the plea proceeding in this case to support what is contained in the

AMENDED
SENTENCING ORDERDEFENDANT'S
COPYDouglas D. True
CR-2014-684

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS, 12TH JUDICIAL DISTRICT 1 DIVISION
On DECEMBER 17, 2014 the Defendant appeared before the Court, was advised of the nature of the charge(s), of
Constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing.

Court Info	Judge STEPHEN TABOR	File Stamp FILED FT. SMITH DIST. 2015 JAN 5 PM 3 18 CLERK SE	
	Prosecuting Attorney/Deputy DAN SHUE		
	Defendant's Attorney CASH HAASER	<input type="checkbox"/> Private <input checked="" type="checkbox"/> Public Defender	
	Change of Venue <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, from:	<input type="checkbox"/> Appointed <input type="checkbox"/> Pro Se	
Legal Statements	<input type="checkbox"/> Pursuant to A.C.A. §§16-93-301 et seq., §§5-64-413 et seq., or _____ this Court, without making a finding of guilt or entering a judgment of guilt and with the consent of the Defendant defers further proceedings and places the Defendant on probation.		
	There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Correction (D.C.C.) rules and regulations.		
	<input checked="" type="checkbox"/> of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.C.) for the term specified on each offense shown below.		
	Defendant made a voluntary, knowing, and intelligent waiver of the right to counsel. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Offender	Defendant [Last, First, MI] TRUE, DOUGLAS DAVID	DOB 11/19/1992	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female
	SID #	Race & Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Unknown <input type="checkbox"/> Other <input type="checkbox"/> Hispanic	Total Number of Counts 2
Supervision Status at Time of Offense ON SIS			
Offense # 1: Most Serious Offense	A.C.A. # of Offense/ Name of Offense 5-10-101/CAPITAL MURDER		Case # CR-2014-684
	A.C.A. # of Original Charged Offense SAME	ATN S E B O O 3 8 3 9 4 4 6	Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted
	Offense Date JULY 20, 2014	Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Probation/SIS Revocation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Criminal History Score 1	Seriousness Level 9	Offense is <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd.
	Presumptive Sentence <input checked="" type="checkbox"/> Prison Sentence of LWOP months <input type="checkbox"/> Community Corrections Center <input type="checkbox"/> Alternative Sanction		Offense Classification <input checked="" type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U
	Number of Counts 1	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense	
	Defendant Sentence* (See page 2) Imposed <input checked="" type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail	If probation accompanied by period of confinement, state time: _____ days or _____ months.	
	Probation _____ months	Sentence was enhanced _____ months, pursuant to A.C.A. § _____	
	SIS _____ months	Enhancement is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive	
	Other <input type="checkbox"/> Life <input checked="" type="checkbox"/> LWOP <input type="checkbox"/> Death	Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)	
	Victim Info# (See page 2) <input type="checkbox"/> N/A <input checked="" type="checkbox"/> [Multiple Victims <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No]	Age 22	Sex <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
	Race & Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic		
	Defendant voluntarily, intelligently, and knowingly entered a <input checked="" type="checkbox"/> negotiated plea of <input checked="" type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.		
	Defendant: <input type="checkbox"/> was sentenced pursuant to §§16-93-301 et seq., §§5-64-413 et seq., or <input type="checkbox"/> other _____		
	<input type="checkbox"/> entered a plea and was sentenced by a jury.		
<input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury.			
<input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury.			
<input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.			
Sentencing Disposition <input type="checkbox"/> Discretionary or <input type="checkbox"/> Disposition _____			
Aggravating or Mitigating _____ For Agg. #16 or Mit. #10, or if departing from _____			
Sentence will run: <input type="checkbox"/> Consecutive <input checked="" type="checkbox"/> Concurrent to Offense # W/EACH OTHER			

RECEIVED

JAN 20 2015

RECORDS OFFICE

Defendant's Full Name: 1 DOUGLAS DAVID

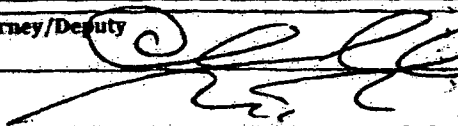
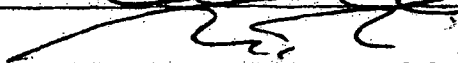
A.C.A. # of Offense/ Name of Offense 5-10-101/CAPITAL MURDER		Case # CR-2014-684	
A.C.A. # of Original Charged Offense SAME	ATN S E B 0 0 3 8 3 9 4 4 6	Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted	
Offense Date JULY 20, 2014	Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Probation/SIS Revocation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Criminal History Score 1	Seriousness Level 9	Offense is <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd.	Offense Classification <input checked="" type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U
Presumptive Sentence <input checked="" type="checkbox"/> Prison Sentence of LWOP months <input type="checkbox"/> Community Corrections Center <input type="checkbox"/> Alternative Sanction			
Number of Counts 1	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense		
Defendant Sentence* (See page 2) Imposed <input checked="" type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail _____ months		If probation accompanied by period of confinement, state time: _____ days or _____ months.	
Probation _____ months		Sentence was enhanced _____ months, pursuant to A.C.A. § _____	
SIS _____ months		Enhancement is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive.	
Other <input type="checkbox"/> Life <input checked="" type="checkbox"/> LWOP <input type="checkbox"/> Death		Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)	
Victim Info# (See page 2) <input type="checkbox"/> N/A [Multiple Victims <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No]	Age unborn	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Race & Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic
Defendant voluntarily, intelligently, and knowingly entered a <input checked="" type="checkbox"/> negotiated plea of <input checked="" type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.		Defendant: <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., <input type="checkbox"/> §§5-64-413 et seq., or <input type="checkbox"/> other _____ <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.	
Sentence is a Departure <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Sentence Departure is <input type="checkbox"/> Durational or <input type="checkbox"/> Dispositional If durational, state how many months above/below the presumptive sentence:	
Departure Reason: (See page 2 for a list of reasons)		Aggravating # _____ or Mitigating # _____ For Agg. #16 or Mlt. #10, or if departing from guidelines, please explain:	
Sentence will run: <input type="checkbox"/> Consecutive <input checked="" type="checkbox"/> Concurrent to Offense # W/EACH OTHER or Case #			

A.C.A. # of Offense/ Name of Offense		Case #	
A.C.A. # of Original Charged Offense	ATN S E B 0 0	Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted	
Offense Date	Appeal from District Court <input type="checkbox"/> Yes <input type="checkbox"/> No	Probation/SIS Revocation <input type="checkbox"/> Yes <input type="checkbox"/> No	
Criminal History Score	Seriousness Level	Offense is <input type="checkbox"/> Felony <input type="checkbox"/> Misd.	Offense Classification <input type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U
Presumptive Sentence <input type="checkbox"/> Prison Sentence of _____ months <input type="checkbox"/> Community Corrections Center <input type="checkbox"/> Alternative Sanction			
Number of Counts	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense		
Defendant Sentence* (See page 2) Imposed <input type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail _____ months		If probation accompanied by period of confinement, state time: _____ days or _____ months.	
Probation _____ months		Sentence was enhanced _____ months, pursuant to A.C.A. § _____	
SIS _____ months		Enhancement is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive.	
Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death		Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)	
Victim Info# (See page 2) <input type="checkbox"/> N/A [Multiple Victims <input type="checkbox"/> Yes <input type="checkbox"/> No]	Age	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic
Defendant voluntarily, intelligently, and knowingly entered a <input type="checkbox"/> negotiated plea of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.		Defendant: <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., <input type="checkbox"/> §§5-64-413 et seq., or <input type="checkbox"/> other _____ <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.	
Sentence is a Departure <input type="checkbox"/> Yes <input type="checkbox"/> No		Sentence Departure is <input type="checkbox"/> Durational or <input type="checkbox"/> Dispositional If durational, state how many months above/below the presumptive sentence:	
Departure Reason: (See page 2 for a list of reasons)		Aggravating # _____ or Mitigating # _____ For Agg. #16 or Mlt. #10, or if departing from guidelines, please explain:	
Sentence will run: <input type="checkbox"/> Consecutive <input type="checkbox"/> Concurrent to Offense # or Case #			

Defendant's Full Name: 1. DOUGLAS DAVID

Special Conditions	Sex Offenses	Domestic Violence Offenses
	Defendant has been adjudicated guilty of an offense requiring sex offender registration and must complete the Sex Offender Registration Form. <input type="checkbox"/> Yes <input type="checkbox"/> No	Defendant has been adjudicated guilty of a domestic-violence related offense. <input type="checkbox"/> Yes <input type="checkbox"/> No
	Defendant has committed an aggravated sex offense as defined in A.C.A. §12-12-903. <input type="checkbox"/> Yes <input type="checkbox"/> No	If no, was defendant originally charged with a domestic-violence related offense? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Defendant is alleged to be a sexually violent predator and is ordered to undergo an evaluation at a facility designated by A.D.C. pursuant to A.C.A. §12-12-918. <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, state the name of the offense:
	Defendant, who has been adjudicated guilty of an offense requiring registration, has been adjudicated guilty of a prior sex offense under a separate case number. <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, list prior case numbers:	If yes to either question, identify the relationship of the victim to the defendant.
	DNA Sample/Qualifying Offense Defendant has been adjudicated guilty of a qualifying offense or repeat offense (as defined in A.C.A. §12-12-1103). <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Defendant is ordered to have a DNA sample drawn at <input type="checkbox"/> a D.C.C. facility <input checked="" type="checkbox"/> the A.D.C. or <input type="checkbox"/> other _____	Drug Crime Defendant has been convicted of a drug crime, as defined in §12-17-101. <input type="checkbox"/> Yes <input type="checkbox"/> No

Times, Fees, Restitution	Court Costs	Restitution
	\$	\$
	Fines \$	Payable to [If multiple beneficiaries, give names and payment priority] PROSECUTING ATTORNEY'S OFFICE
	Booking/Admin Fees (\$20) \$	
	Drug Crime Assessment Fee (\$125) \$	
	DNA Sample Fee (\$250) \$	Terms <input type="checkbox"/> Due Immediately
	Mandatory Sex Offender Fee (\$250) \$	<input type="checkbox"/> Installments of:
	Public Defender User Fee \$	<input type="checkbox"/> Payments must be made within _____ days of release from A.D.C.
	Public Defender Attorney Fee \$	<input type="checkbox"/> Upon release from confinement, Defendant must return to court to establish payment of restitution
	Other (explain) \$	<input type="checkbox"/> Restitution is joint and several with co-defendant(s) who was found guilty - List name(s) and case number(s)

Sentence Options	Act 531, §§16-93-1201 et seq.: Defendant was convicted of a target offense(s) and is sentenced pursuant to provisions of the Community Punishment Act. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Extended Juvenile Jurisdiction Applied <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	The Court hereby orders a judicial transfer to the Department of Community Correction. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Pursuant to the Community Punishment Act, the Defendant shall be eligible to have his/her records sealed. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	JAIL TIME CREDIT 129 In days:	TOTAL TIME TO BE SERVED FOR ALL OFFENSES In months: <input type="checkbox"/> Life <input checked="" type="checkbox"/> LWOP
	DEFENDANT IS ASSIGNED TO: <input checked="" type="checkbox"/> ADC <input type="checkbox"/> CCC <input type="checkbox"/> COUNTY JAIL <input type="checkbox"/> PROBATION <input type="checkbox"/> SIS <input type="checkbox"/> SPECIAL CONDITIONS	Death Penalty <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Conditions of disposition or probation are attached. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, State Execution Date:
	A copy of the pre-sentence investigation on sentencing information is attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Defendant has previously failed a drug court program.
	A copy of the Prosecutor's Short Report is attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	DEFENDANT WAS INFORMED OF APPELLATE RIGHTS <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Appeal Bond \$	
	The County Sheriff is hereby ordered to: <input type="checkbox"/> transport the defendant to county jail <input type="checkbox"/> take custody for referral to CCC <input checked="" type="checkbox"/> transport to ADC	
	Defendant shall report to DCC probation officer for report date to CCC <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Signature	Prosecuting Attorney/Deputy Signature: 	Date: DECEMBER 17, 2014 Print Name: DAN SHUE
	Circuit Judge Signature: 	Date: 7-8-15 Print Name: STEPHEN TABOR

Additional Info:

SEE ATTACHED ADDITIONAL TERMS/CONDITIONS OF DISPOSITION

Douglas D. True
CR-2014-684

- ____ Additional checks that come in may be added by separate order and/or
____ specific amount to be set by separate order
- ____ Restitution JOINT/SEVERAL with co-defendant(s).
- ____ \$5.00 administrative fee to be paid with each restitution payment; and a \$10 administrative fee to be paid with each fine payment.
- ____ Adult probation for ____ yrs/mths, pay \$20 mthly fee beg.
- ____ Forfeiture of monies \$____, ____ payable, ____ seized at arrest.
- ____ Forfeiture of property _____
- ____ Community service work ____ hrs/days; with ____ hrs suspended to be completed, within ____ days.
- ____ Landfill work ____ days beginning _____
To be served ____ from home ____ from SCDC
- ____ Surrender for ADC sentence on _____ at ____ am.
Bond provision: _____
- ____ Boot camp authorized.
- ____ Counseling/Rehab for:
Progress reports to ____ Court ____ Prosecutor
- ____ Obtain GED through DCC be enrolled within ____ days w/Proof to Prosecutor
- ____ Defendant to participate/abide by the DCC Sex Offender Program
- ____ Defendant to complete Long Term Rehabilitation Program.
- ____ Victim approves of disposition ____ appears ____ defendant to have no contact with victim.
- ____ Driver's license suspended 6 months; ____ w/o permit
____ with permit for driving _____
- ____ Suspended time conditioned upon good behavior.
- ____ Any violation of the terms and conditions of this suspended imposition of sentence may result in a revocation and/or a finding of contempt of court.
- ____ Advised/Agrees to taking Non-Citizen of US Plea.
Amended to show 1 Count on Offense #1
- X OTHER: **VICTIM IMPACT STATEMENTS READ TO COURT**

Appendix B
1 of 3

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

DOUGLAS DAVID TRUE

PETITIONER

V.

CASE NO. 5:18CV00189 BRW-PSH

**WENDY KELLEY, Director,
Arkansas Department of Correction**

RESPONDENT

SECOND MOTION FOR EXTENSION OF TIME

Comes now the respondent, Wendy Kelley, Director, Arkansas Department of Correction, by and through counsel, Leslie Rutledge, Attorney General, and Kent G. Holt, Assistant Attorney General, and for his motion, states:

I.

The response is presently due to be filed with this Court on September 14, 2018. Respondent requests an extension of fourteen (14) days to file the response. Respondent has had one previous eighteen (18) days extension of time for filing his response in this case.

II.

Counsel for respondent has attempted to obtain a transcript of petitioner's plea colloquy along with forensic reports referenced in petitioner's pleadings in the time allowed for responding. However, the court reporter who originally reported the plea is no longer the current circuit court reporter and counsel is working through the state circuit court in order to locate her. Additionally, counsel for

respondent has requested documents from the state crime lab so that respondent can, in addition to asserting possible defenses, address all the points raised on the merits. The additional time is needed in order to assure that adequate consideration will be given to respondent's argument in this case. The opposing party is proceeding pro se, and his incarceration makes it impracticable to obtain his consent, or lack thereof, within a reasonable time. This motion is made in good faith and not for purposes of unnecessary delay.

WHEREFORE, the respondent respectfully prays that his motion to extend the time for filing his response be extended fourteen (14) days making the respondent's response due to be filed on September 28, 2018.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

BY: /s/Kent G. Holt

KENT G. HOLT

Arkansas Bar No. 86090

Assistant Attorney General

323 Center Street, Suite 200

Little Rock, Arkansas 72201

(501) 682-5322 [phone]

(501) 682-2083 [fax]

Kent.Holt@arkansasag.gov

ATTORNEYS FOR RESPONDENT

Appendix B
3 of 3

CERTIFICATE OF SERVICE

I, Kent G. Holt, hereby certify that on September 13, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and mailed a copy of the document, along with a copy of the Notice of Electronic Filing, by U.S. Mail, postage prepaid, to the following non CM/ECF participant:

Mr. Douglas David True
ADC #159617
Maximum Security Unit
2501 State Farm Road
Tucker, AR 72168

/s/Kent G. Holt

Kent G. Holt

JOSEPH C. SELF
Attorney at Law

6301 Hwy 45, Suite C
Fort Smith, AR 72916-8857

Office: 479-785-5881
Facsimile: 479-785-5883

E-mail: Selflawfirm@juno.com

October 31, 2018

Mr. Douglas True
#159617
2501 State Farm Rd.
Tucker, AR 72168


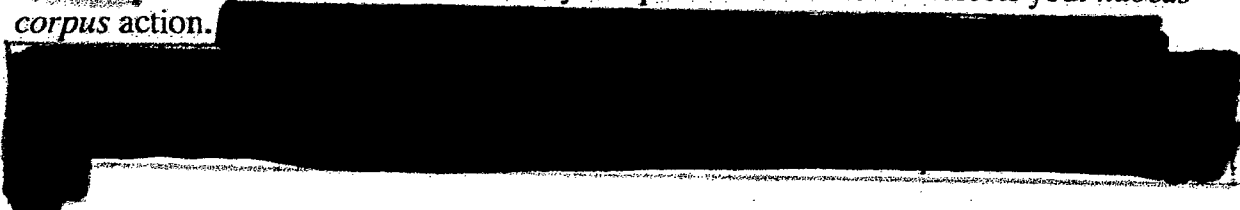
LEGAL MAIL

RE: Your letter of October 5, 2018

Dear Mr. True:

Enclosed, please find the medical records that I obtained from the Department of Corrections and from the Sebastian County Sheriff's Office. I have not reviewed them at all, because I would have no idea if they were complete.

In reference to your letter of October 5, 2018, I received a call from the court reporter before I received your letter asking about a copy of the transcript. I did not have a copy of the transcript, and am told that the prosecuting attorney's office also does not have one. I do not know the answer to your question about how it affects your *habeas corpus* action.



AFFIDAVIT

COMES NOW Joseph C. Self, and having been first duly sworn, states as follows.

I am an attorney, practicing in Sebastian County, Arkansas, and have been since 1982.

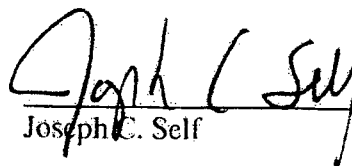
In 2016, I was appointed by Judge Stephen Tabor to assist Douglas True in presenting a Rule 37 petition that Mr. True had filed pro se, alleging his trial counsel had been ineffective in representing him, and thus caused him to enter a plea to the charges against him.

Following a hearing on his petition, Judge Tabor found that Mr. True did not prove his counsel was inadequate. This ruling was upheld on appeal.

In 2018, I was retained by Mr. True's family to gather all the documents that pertained to his case. In doing so, I was told by the court reporter that the transcript for Mr. True's change of plea hearing could not be located. Judge Tabor had changed court reporters in the time between the plea and when I was working to accumulate all the documents, and the current reporter couldn't find the tape of the hearing which was recorded by her predecessor. She advised that the prosecutor also did not have a copy of the change of plea hearing.

The adequacy of the plea proceeding was not raised in the original Rule 37 petition, and therefore the absence of the record for that hearing was not known in 2016. It was not until I attempted to gather the entire record for Mr. True in 2018 did I discover it was not available for review.

Further, the affiant saith not.

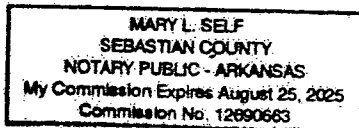

Joseph C. Self

COUNTY OF SEBASTIAN)
)
STATE OF ARKANSAS) SS.

SWORN TO AND SUBSCRIBED before me on the 18th day of May,
2020.

08-25-25
My Commission Expires:

Mary L. Self
NOTARY PUBLIC

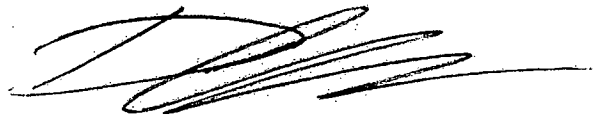


CERTIFICATE OF SERVICE

I, Douglas D. True, do hereby certify that on this 31st day of July 2020, a true and correct copy of the foregoing was mailed, postage prepaid, to the following recipients:

Office of Attorney General Leslie Rutledge
323 Center Street, Suite 200
Little Rock, Arkansas 72201-2610

Circuit Court of Jefferson County
101 West Barrague St, Suite 104
Pine Bluff, Arkansas 71601



Douglas D. True, pro se

ADC #159617

Maximum Security unit

2501 State Farm Road

Tucker, Arkansas 72168