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APPENDIX A

Decision of Court of Criminal Appeals denying the Writ.

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NO. 1996CR3437A-W3

EX PARTE

§ IN THE DISTRICT COURT

DETTRICK DEROVEN

§ 186TH JUDICIAL DISTRICT

§ BEXAR COUNTY, TEXAS

ORDER

Detrick Deroven has filed a pro se application for post-conviction writ of habeas corpus, seeking relief from his conviction and sentence in Cause Number 1996CR3437A.

HISTORY OF THE CASE

Applicant was convicted in 1997 of Capital Murder and sentenced to Life confinement. As Notice of Appeal was given late, his first appeal was dismissed, without jurisdiction, by the Fourth Court of Appeals. Pursuant to his first application for habeas relief, the Court of Criminal Appeals authorized the out-of-time filing of Notice of Appeal (#73,203, October 28, 1998). The appeal again went forward, and the case was affirmed. Appellate counsel did not get notice of the affirmance, and therefore did not timely file a Petition for Discretionary Review. Applicant's second post-conviction application resulted in an order of the Court of Criminal Appeals authorizing the late filing of a petition for discretionary review 9#74,229). Petition for discretionary review was then filed and refused (#0033-02, April 17, 2001). The present application was filed on September 23, 2004. Because neither prior writ application attacked the conviction, this application is not barred.

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ALLEGATIONS

1. Applicant alleges that he received ineffective assistance of counsel at his trial.

Under this general allegation, he alleges a number of specific instances of what he asserts to have been ineffective assistance, including failure to object to the charge of accomplice testimony, failure to preserve alleged error regarding the testimony of the witness whose testimony was most directly damaging to Applicant, failure to obtain the trial records from that witness' own trial for the same offense (at which he was acquitted), failure to object to leading questions by the prosecutor, failure to interview certain witnesses, failure to object to inadmissible evidence, and calling Applicant as a witness in his own behalf and allowing him to testify as to his gang membership.

2. Applicant asserts that his appellate attorney was ineffective for failure to raise ineffectiveness of trial counsel.
3. Actual innocence. Applicant asserts that the witness whose testimony against him was most damning has now recanted his testimony. Two identically worded affidavits said to have been executed by that witness are attached to the application.

FINDINGS OF FACT

1. The court's charge on accomplice testimony was a ground of error on direct appeal and was decided adversely to Applicant. Moreover, the person he asserts to have been an accomplice as a matter of law was acquitted by a jury.

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2. Applicant attached a copy of an interview by an investigator for the defense of a witness named Tiffany Nious and asserts that counsel was ineffective for failure to call her as a witness at his trial. The document reflects that her testimony would have been ambiguous in the extreme (i.e., Applicant was at her place of business, at the drive in window, somewhere around 2:00 or 2:30 AM). Trial counsel called Applicant's girlfriend, who claimed to have been with Applicant all evening and was thus a far better alibi witness. (Unfortunately for Applicant, however, she had previously given inconsistent statements to authorities and was severely impeached by them).
3. With the exception of the witness Lyndon Jamison, who has allegedly recanted, Applicant offers no other evidence of his multiple assertions as to what persons who were not called as witnesses might have said if called. There is no showing as to what use could have been made of the record of Lyndon Jamison's trial, had it been obtained. The court is left to speculate what the allegedly¹ uninterviewed witnesses would have said had they been interviewed and/or called as witnesses at the trial.
4. Applicant's attorney had (because Applicant had) no authority to assert the rights of witnesses in the case who were required to testify after claiming that they had a Fifth Amendment privilege not to do so.
5. The balance of Applicant's assertions regarding alleged error relate to matters contained within the appellate record and were either resolved on direct appeal or bypassed at that time. For example, Applicant's gang membership was relevant to his motive for commission of the offense, and thus admissible.

¹ Applicant's trial counsel is no longer in the practice of law and no longer in San Antonio.

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6. The witness Lyndon Jamison is the witness whose testimony detailed Applicant's conduct on the night in question and conclusively demonstrated Applicant's guilt. He is also the witness who himself stood trial for the same prior to Applicant and was acquitted². (That is why he no longer had a Fifth Amendment privilege, which he tried to assert, when he testified in Applicant's trial). Assuming arguendo that the affidavits of recantation attached to the Application were in fact executed by the self same Lyndon Jamison, Applicant is faced with something very much like the liar's paradox³. That is, after he has asserted at length what a liar Mr. Jamison is, he now asks the court to believe him when he says that he lied under oath. Such evidence is not worthy of serious consideration. There is no other evidence of the claim of Innocence.

CONCLUSIONS OF LAW

1. This application is not procedurally barred, and should be addressed on its merits.
2. Trial counsel has not been shown to have been ineffective. He was capable of rendering and rendered reasonably effective assistance. More is not required.
3. Appellate Counsel cannot be faulted for failure to allege a claim of ineffective assistance of trial counsel, when the record does not support such a claim.
4. Applicant is not factually innocent.

² Jamison's testimony at Applicant's trial was that he was forced by Applicant at gunpoint to drive Applicant to where he committed the offense. Whether Jamison was an accomplice as a matter of fact was submitted to the jury in the court's charge.

³ What is one to believe from the person who says "I always lie when I make declarative statements"? If that statement is true, it is false.

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6. The witness Lyndon Jamison is the witness whose testimony detailed Applicant's conduct on the night in question and conclusively demonstrated Applicant's guilt. He is also the witness who himself stood trial for the same offense prior to Applicant and was acquitted². (That is why he no longer had a Fifth Amendment privilege, which he tried to assert, when he testified in Applicant's trial). Assuming arguendo that the affidavits of recantation attached to the Application were in fact executed by the self same Lyndon Jamison, Applicant is faced with something very much like the liar's paradox³. That is, after he has asserted at length what a liar Mr. Jamison is, he now asks the court to believe him when he says that he lied under oath. Such evidence is not worthy of serious consideration. There is no other evidence of the claim of innocence.

CONCLUSIONS OF LAW

1. This application is not procedurally barred, and should be addressed on its merits.
2. Trial counsel has not been shown to have been ineffective. He was capable of rendering and rendered reasonably effective assistance. More is not required.
3. Appellate Counsel cannot be faulted for failure to allege a claim of ineffective assistance of trial counsel, when the record does not support such a claim.
4. Applicant is not factually innocent.

² Jamison's testimony at Applicant's trial was that he was forced by Applicant at gunpoint to drive Applicant to where he committed the offense. Whether Jamison was an accomplice as a matter of fact was submitted to the jury in the court's charge.

³ What is one to believe from the person who says "I always lie when I make declarative statements"? If that statement is true, it is false.

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RECOMMENDATION

The Applicant having failed to demonstrate that there are controverted, previously unresolved facts material to his confinement, it is recommended that relief be DENIED.

ORDERS OF THE COURT

The District Clerk will prepare a copy of this document, together with any attachments and forward the same to the following by mail or the most practical means:

The Court of Criminal Appeals
Austin, Texas 78711

Susan D. Reed, Criminal District Attorney
Bexar County Justice Center
San Antonio, Texas 78205

Detrick Detronen, #837354
12002 FM 350 South
Livingston, Texas 77354

SIGNED, ORDERED and DECREED this 23 day of February, 2005.

February, 2005.
Maria Teresa Herr
Maria Teresa Herr, Judge Presiding
186th District Court
Bexar County, Texas

APPENDIX B

Order of Court of Criminal Appeals dismissing subsequent Writ.

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APPLICANT

DETTRICK DEROVEN

APPLICATION NO. WR-39,146-04

APPLICATION FOR 11.07 WRIT OF HABEAS CORPUS

ACTION TAKEN

DISMISSED, SUBSEQUENT APPLICATION. TEX. CODE CRIM. PROC. Art. 11.07, § 4(a)-(e).

Paul Womack
JUDGE

December 4, 2013
DATE

NO. 1996-CR-3437A-W4

EX PARTE

§

IN THE DISTRICT COURT

§

186TH JUDICIAL DISTRICT

DETTRICK DEROVEN

§

BEXAR COUNTY, TEXAS

ORDER

Applicant, Detrick Deroven, has filed, pro se, a fourth application for post conviction writ of habeas corpus pursuant to Article 11.07, Texas Code of Criminal Procedure, collaterally attacking his conviction in cause number 1996-CR-3437A. *See* Tex. Code Crim. Proc. Ann. art. 11.07 (Vernon Supp. 2012).

HISTORY OF THE CASE

On November 21, 1997, Applicant was convicted of **capital murder** and was sentenced to life in the Texas Department of Criminal Justice - Institutional Division. The Fourth Court of Appeals affirmed Applicant's appeal on January 26, 2000, Appeal No. 04-98-00942-CR. Applicant's previous writ application was denied without a written order on the trial court's findings without a hearing on June 15, 2005 (WR-39,146-03). Applicant filed this application for writ of habeas corpus on October 2, 2013. The District Attorney's office received a copy of the application on October 9, 2013.

ALLEGATIONS OF APPLICANT

1. In his first ground for relief, Applicant alleges "contrary/unreasonable application of clearly established federal standard." It appears that Applicant is claiming that the statement by witness Lyndon Jamison recanting his trial testimony is newly available evidence and, as such, establishes his claim of actual innocence.
2. In his second ground for relief, Applicant claims actual innocence. Applicant claims the

prosecution knowingly used false witness testimony which deprived Applicant of a fair and impartial trial. Applicant claims that if not for the violation, no rational juror could have found Applicant guilty beyond a reasonable doubt.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant alleged actual innocence in his previous writ based on an affidavit from witness Lyndon Jamison recanting his accomplice testimony.
2. This Court does not have jurisdiction to consider the merits of a subsequent application for writ of habeas corpus "unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously in an original application." TEX. CODE CRIM. PROC. art. 11.07, § 4(a)(1) (West 2012). A final disposition of a prior petition for writ of habeas corpus, for the purposes of the procedural bar to a subsequent applicant challenging the same conviction, must entail a disposition relating to the merits of all the claims raised. *Ex parte Santana*, 227 S.W.3d 700 (Tex. Crim. App. 2007). In Applicant's previous writ of habeas corpus, the merits of Applicant's claims were considered and subsequently denied by the court (WR-39,146-03). Accordingly, this court finds that Applicant is not entitled to relief on this subsequent writ application
3. Based on the foregoing findings of fact and conclusions of law, it is hereby recommended that this application be **DISMISSED**.

ORDERS

The District Clerk of Bexar County, Texas, is hereby ordered to prepare a copy of this document, together with any attachments and forward the same to the following persons by mail or

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the most practical means:

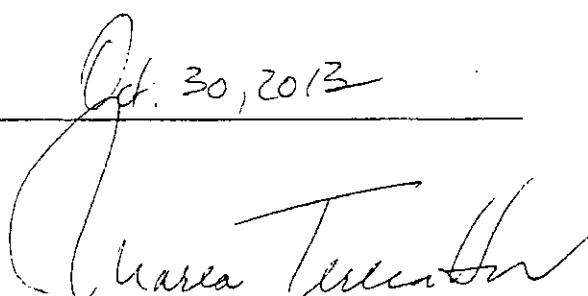
a. The Court of Criminal Appeals
Austin, Texas 78711

b. Hon. Susan D. Reed
Criminal District Attorney
Paul Elizondo Tower
Bexar County, Texas 78205

c. Detrick Deroven
TDCJ # 837354
Alfred D. Hughes Unit
Route 2 Box 4400
Gatesville, TX 76597

SIGNED, ORDERED and DECREED on

Oct. 30, 2013


JUDGE MARÍA TERESA HERR
186th Judicial District Court
Bexar County, Texas

APPENDIX C

Order of Court of Criminal Appeals dismissing rehearing.

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APPLICANT DETTRICK DEROVEN

APPLICATION NO. WR-39,146-03

APPLICATION FOR 11.07 WRIT OF HABEAS CORPUS

ACTION TAKEN

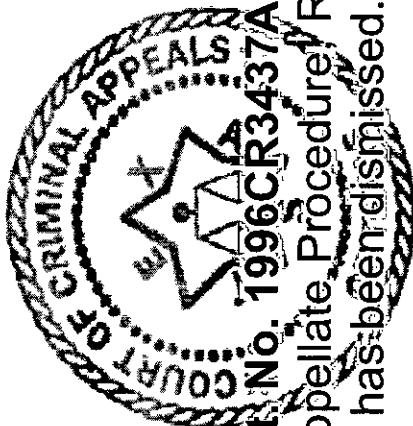
DENIED WITHOUT WRITTEN ORDER ON FINDINGS OF TRIAL COURT WITHOUT A HEARING.

Lacee
JUDGE

6-15-05

DATE

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



1/11/2022

DEROVEN, DETRICK Tr. C.

No. 1996CR3437A-W3
WR-39,146-03
Pursuant to Texas Rules of Appellate Procedure, Rule 79.2 (d), applicant's Motion
for Reconsideration/Rehearing has been dismissed.

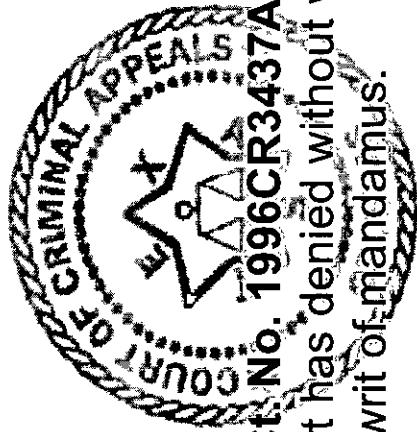
Deana Williamson, Clerk

DETTRICK DEROVEN
HUGHES UNIT - TDC #837354
RT. 2, BOX 4400
GATESVILLE, TX 76597

APPENDIX D

Decision of Court of Criminal Appeals denying Mandamus.

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



1/19/2022

DEROVEN, DETRICK

Tr. C. No. 1996CR3437A-W3

This is to advise that the Court has denied without written order motion for leave to file the original application for writ of mandamus.

WR-39,146-05

Deana Williamson, Clerk

DETRICK DEROVEN
HUGHES UNIT - TDC #837354
RT. 2, BOX 4400
GATESVILLE, TX 76597