"STATEMENT OF THE CASE"

APPENDIX-A

DISMISSED APPLICANT'S SUBSEQUENT APPLICATION
WRIT OF HABEAS CORPUS WITHOUT WRITTEN ORDER
(COURT OF CRIMINAL APPEALS)
AUSTIN, TX-SUBSEQUENT WRIT

"Appendix A."

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
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STATE OF TEXAS
PENALTY FOR
PRIVATE USE

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11/17/2021

DAVIS, VEDAL A AKA DAVIS, VEDAL **Tr. Ct. No. 20784B**

WR-84,123-03

The Court has dismissed without written order this subsequent application for a writ of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Deana Williamson, Clerk

VEDAL A DAVIS
RAMSEY I UNIT - TDC # 1682276
1100 FM 655
ROSHARON, TX 77583

CMIWNAB 77583

"STATEMENT OF THE CASE"

APPENDIX-B

356TH DISTRICT COURT ORDER/FACTS & CONCLUSIONS OF LAW
RECOMMENDING DISMISSAL
EX PARTE VEDAL A. DAVIS/CAUSE NO. 20784B
HARDIN COUNTY, TX-SUBSEQUENT WRIT

"Appendix B."

TM

FILED FOR RECORD
2021 JUL 22 PM 1:00
JANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS
By Deputy: T Morgan

CAUSE NO. 20784B

EX PARTE	§	**THE 356TH DISTRICT COURT**
	§	
	§	**OF**
	§	
VEDAL ABDUL DAVIS	§	**HARDIN COUNTY, TEXAS**

ORDER

The Court recommends that the subsequent habeas application of VEDAL ABDUL DAVIS ("Applicant") should be **DISMISSED.**

Alternatively, the Court recommends that the relief VEDAL ABDUL DAVIS ("Applicant") requests should be **DENIED.**

The Court further orders and directs:

1. The Clerk of this Court to file order and transmit it along with the Writ Transcript to the Clerk of the Court of Criminal Appeals as required by law.

2. The Clerk of this Court to furnish a copy of the Court's findings to:

   Mr. Vedal Davis
   TDCJ-ID# 01682276
   Ramsey I Unit
   1100 FM 655
   Rosharon, Texas 77583; and

   the Hardin County District Attorney's Office.

SIGNED AND ENTERED this 22 day of July, 2021.

JUDGE PRESIDING,
356TH DISTRICT COURT

Filed: 7/21/2021 2:27 PM
Dana Hogg, District Clerk
Hardin County, Texas
By: Tracie Morgan

CAUSE NO. 20784B

EX PARTE	§	**THE 356TH DISTRICT COURT**
	§	
	§	**OF**
	§	
VEDAL ABDUL DAVIS	§	**HARDIN COUNTY, TEXAS**

RESPONDENT'S ORIGINAL ANSWER

COMES NOW, Respondent, the State of Texas by and through its District Attorney for Hardin County, pursuant to article 11.07 of the TEXAS CODE OF CRIMINAL PROCEDURE, files this original answer in response to the above-mentioned subsequent application for writ of habeas corpus and generally denies Applicant's allegations, and would show the following in support thereof:

Procedural History

A jury found Applicant guilty of aggravated assault with a deadly weapon, found the enhancement paragraphs true, assessed punishment at thirty-three years of confinement in prison, and assessed a $10,000 fine.

Applicant appealed his conviction.

On July 25, 2012, the Ninth Court of Appeals, finding no reversible error, delivered an opinion affirming the trial court's judgment in cause number 20784. *Davis v. State*, No. 09-10-00538-CR (Tex. App.—Beaumont July 25, 2012, pet. ref'd) (mem. op., not designated for publication).

On November 2, 2015, Applicant filed a *pro se* application for writ of habeas corpus, cause number 20784A, challenging his conviction in cause number 20784.

On June 8, 2016, the Court of Criminal Appeals denied without written order Applicant's application for writ of habeas corpus in cause number 20784A. *Ex parte Davis*, No. WR-84, 123-01 (Tex. Crim. App. 2016).

On July 8, 2021, Applicant filed a subsequent *pro se* application for writ of habeas corpus, cause number 20784B, challenging his conviction in cause number 20784.

Burden of Proof

In a habeas proceeding, the applicant bears the burden of proof and must prove by a preponderance of the evidence that any alleged error contributed to his conviction or punishment. *Ex parte Rains*, 555 S.W.2d 478 (Tex. Crim. App. 1977); *Ex parte Williams*, 65 S.W.3d 656, 658 (Tex. Crim. App. 2001). The requested relief may be denied if the applicant states mere conclusions. *Ex parte McPhereson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000). An applicant's sworn allegations alone are insufficient to prove his claims. *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex. Crim. App. 1988).

If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not

consider the merits of or grant relief based on the subsequent application 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 or in a previously considered application filed under article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 4(a). A legal basis of a claim is unavailable on or before the date of the previous application if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this State on or before that date. *Id.* at § 4(b). A factual basis of a claim is unavailable on or before the date of the previous application if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date. *Id.* at § 4(c).

Response to Applicant's Instant Grounds for Relief

Application Subject to Dismissal

Applicant claims his current grounds for relief were not and could not have been presented in his previous application because "the factual and/or legal basis for his claim[s] was unavailable on the date Davis filed his previous application." *Applicant's Subsequent Application for Writ of Habeas Corpus* (hereinafter

"*Application*"), filed July 8, 2021, in cause number 20784B, pg. 4. In four grounds for relief, Applicant alleges that he was:

1. denied due process of law because his conviction in cause number 15093 was "not final" when it was used for enhancement purposes;

2. denied due process of law because his conviction in cause number 13718 was "not final" when it was used for enhancement purposes;

3. denied the effective assistance of counsel when trial counsel allegedly failed to investigate the "finality" of the convictions in the two, above-mentioned cause numbers; and

4. denied the effective assistance of counsel when trial counsel allegedly failed to "allow applicant to present the defense he wanted."

Applicant cites to and relies upon *Ex parte Pue*, 552 S.W.3d 226 (Tex. Crim. App. 2018) and *McCoy v. Louisiana*, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018) as providing the allegedly previously unavailable "factual/legal basis." *Pue* addressed whether the finality determination of an out-of-state prior conviction is to be determined under Texas law or the law of the state out of which the conviction arises. 552 S.W.3d at 229. However, Applicant's convictions in cause number 15093 and cause number 13718 are both Texas convictions. Thus, *Pue* is inapplicable to this case and does not present Applicant with a new legal basis previously unavailable to him.

Moreover, to the extent *Pue* could be read to apply to the present case, *Pue* merely serves to reiterate "well established" Texas legal principles that only convictions that are "final" can be used for enhancement purposes. As such, Applicant fails to establish that the factual or legal basis for his current claims could not have been presented his previously considered article 11.07 application because these bases were unavailable on the date the applicant filed the previous application. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07 § 4.

Applicant also argues *McCoy* provides him a previously unavailable legal basis for relief. Contrary to Applicant's assertions, the Court of Criminal Appeals has definitively rejected such an argument. *Ex parte Barbee*, 616 S.W.3d 836, 844-45 (Tex. Crim. App. 2021) (examining *McCoy*, 138 S. Ct. 1500, 200 L. Ed. 2d 821 and holding it was founded on "familiar legal principles" … and "a logical extension" of long-standing principles).

The factual and legal bases for Applicant's first and second grounds for relief were previously available under the terms of article 11.07, section 4. As such, these grounds cannot be considered and relief cannot be granted. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 4(a).

Likewise, Applicant's arguments in his third and fourth grounds that he received ineffective assistance of counsel and was prevented from presenting his

defense by trial counsel and the trial court are arguments the factual bases of which were known to Applicant at the time of his initial application for habeas relief and the law applicable to these issues is well-settled and has not changed. Thus, these are arguments that could have been but were not raised in Applicant's initial habeas application. As such, these claims cannot be considered on the merits should be dismissed. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 4(a).

The factual and legal bases for all Applicant's current claims were previously available under the terms of article 11.07, section 4. Applicant's grounds for relief cannot be considered and relief cannot be granted. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 4(a). Accordingly, Applicant's application should be dismissed.

Applicant's Claims Subject to Denial

To the extent Applicant's argument in his first and second grounds is that his convictions were not "final" because he appealed them and was allegedly free on appeal bond for the duration of the sentences, these are arguments that could have been but were not raised on direct appeal. Accordingly, these claims are procedurally barred because they could have been raised on direct appeal but were not. *Ex parte Nelson*, 137 S.W.3d 666, 667 (Tex. Crim. App. 2004).

Likewise, Applicant's arguments in his third and fourth grounds that he received ineffective assistance of counsel and was prevented from presented his

defense are arguments the factual bases of which were known to Applicant on direct appeal and the law applicable to these issues is well-settled and has not changed. Thus, these are arguments that could have been raised on direct appeal. *Nelson*, 137 S.W.3d at 667. As such, these claims are procedurally barred and subject to denial. TEX. CODE CRIM. PROC. ANN. art. 11.07 § 4(a); *Nelson*, 137 S.W.3d at 667.

The writ of habeas corpus is not a substitute for matters which should have been raised on direct appeal. *Nelson*, 137 S.W.3d at 667. Accordingly, Applicant's requested relief on all grounds should be denied.

Resolution of Factual Issues

There is no need for an expansion of the record. Applicant's allegations can be resolved based on the record before the trial court.

Respondent would respectfully request that the trial court consider Applicant's pleadings, the reporter's record of the trial hearing, if the same exists, and the trial court's official records maintained by the District Clerk of Hardin County.

Prayer

Wherefore premises considered, Respondent, the State of Texas, respectfully prays that the trial court enter an order recommending DISMISSAL of Applicant's application or, in the alternative, DENIAL of Applicant's requested relief on all grounds.

Respectfully submitted,

/s/ Michelle R. Townsend
MICHELLE R. TOWNSEND
State Bar Number: 24049295
Assistant District Attorney
Hardin County, Texas
P. O. Box 1409
Kountze, Texas 77625
Telephone: (409) 246-5160
Facsimile: (409) 246-5142
michelletownsendlaw@gmail.com

CERTIFICATE OF SERVICE

Respondent requests that Applicant be served with a copy of this answer by the Hardin County District Clerk's Office pursuant to article 11.07, section 7 of the TEXAS CODE OF CRIMINAL PROCEDURE.

Respectfully submitted,

/s/ Michelle R. Townsend
MICHELLE R. TOWNSEND
State Bar Number: 24049295
Assistant District Attorney
Hardin County, Texas

CERTIFICATE OF COMPLIANCE

The undersigned assistant district attorney certifies that this answer is computer-generated, 14-point font, complies with TEXAS RULE OF APPELLATE PROCEDURE 73.3, and, based on the word count from the computer program used to prepare this answer, consists of 1,248 words.

Respectfully submitted,

/s/ Michelle R. Townsend
MICHELLE R. TOWNSEND
State Bar Number: 24049295
Assistant District Attorney
Hardin County, Texas

"STATEMENT OF THE CASE"

APPENDIX-C

DENIED APPLICANT'S MOTION FOR REHEARING
(COURT OF CRIMINAL APPEALS OF TEXAS)
AUSTIN, TX-SUBSEQUENT WRIT

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
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1/18/2022
DAVIS, VEDAL A AKA DAVIS, VEDAL **Tr. Ct. No. 20784B**
WR-84,123-03

On this day, this Court has denied applicant's motion for reconsideration/rehearing.

Deana Williamson, Clerk

VEDAL A DAVIS
RAMSEY I UNIT - TDC # 1682276
1100 FM 655
ROSHARON, TX 77583

"STATEMENT OF THE CASE"

APPENDIX-D

ORDER DENYING PETITIONER'S CERTIFICATE OF APPEALABILITY
(UNITED STATES COURT OF APPEALS FIFTH CIRCUIT)
NEW ORLEANS, LA-CERTIFICATE OF APPEALABILITY

"Appendix D."

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-41706
USDC No. 1:16-CV-398

VEDAL ABDUL DAVIS,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas

O R D E R:

Vedal Abdul Davis, Texas prisoner # 1682276, moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 application challenging his conviction for aggravated assault with a deadly weapon. The district court denied the § 2254 application as time barred. Davis argues that the district court should have granted equitable tolling, the trial court lacked jurisdiction over his criminal proceedings because his indictment was void, his criminal trial was unfair because he was erroneously prohibited from raising the statute of limitations as a defense, and his trial counsel provided ineffective assistance with respect to his indictment.

To obtain a COA, Davis must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). When the district court denies relief based on procedural grounds, a COA should be granted "when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Davis has not made the requisite showing.

Accordingly, his motion for a COA is DENIED.

Edward C. Prado

EDWARD C. PRADO
UNITED STATES CIRCUIT JUDGE

"STATEMENT OF THE CASE"

APPENDIX-E

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTION AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS) BEAUMONT, TEXAS-MEMORANDUM ORDER

"Appendix E."

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

VEDAL ABDUL DAVIS,	§	
	§	
Petitioner,	§	
	§	
versus	§	CIVIL ACTION NO. 1:16-CV-398
	§	
DIRECTOR, TDCJ-CID,	§	
	§	
Respondent.	§	

FINAL JUDGMENT

This action came on before the Court, Honorable Marcia A. Crone, District Judge, presiding, and, the issues having been considered and a decision having been rendered, it is

ORDERED and **ADJUDGED** that this petition for writ of habeas corpus is **DISMISSED**. A certificate of appealability will not be issued. All motions not previously ruled on are **DENIED**.

SIGNED at Beaumont, Texas, this 29th day of November, 2016.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

VEDAL ABDUL DAVIS,	§	
	§	
Petitioner,	§	
	§	
versus	§	CIVIL ACTION NO. 1:16-CV-398
	§	
DIRECTOR, TDCJ-CID,	§	
	§	
Respondent.	§	

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Vedal Abdul Davis, a prisoner confined at the Ramsey Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se,* filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the petition as barred by the statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Petitioner contends the magistrate judge misconstrued his claim, and that he is challenging the trial court's jurisdiction to enter a judgment after prior indictments had been dismissed. Regardless of how the claim is construed, the magistrate judge correctly

concluded that the petition is barred by the statute of limitations. Petitioner argues the statute of limitations should not apply to this petition because he was unaware that he had limited time to file a federal petition. Ignorance of the law does not excuse a prisoner's failure to timely file a petition. *Fisher v. Johnson*, 174 F.3d 710, 714 (5th Cir. 1999). Equitable tolling of the statute of limitations is available in certain cases. *Holland v. Florida*, 560 U.S. 631, 130 S. Ct. 2549, 2562 (2010). However, equitable tolling is not warranted in this case because petitioner did not diligently pursue his rights, and there were no extraordinary circumstances preventing him from filing a timely petition. *Id.* Excusable neglect and ignorance of the law do not justify equitable tolling. *Sutton v. Cain*, 722 F.3d 312, 316 (5th Cir. 2013).

Additionally, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may

be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

Petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The questions presented are not worthy of encouragement to proceed further. Therefore, the petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

ORDER

Accordingly, the petitioner's objections (#5) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#3) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation. A certificate of appealability will not be issued.

SIGNED at Beaumont, Texas, this 29th day of November, 2016.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

"STATEMENT OF THE CASE"

APPENDIX-F

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE
(UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS)
BEAUMONT, TEXAS-REPORT AND RECOMMENDATION

"Appendix F."

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

VEDAL ABDUL DAVIS	§	
VS.	§	CIVIL ACTION NO. 1:16-CV-398
DIRECTOR, TDCJ-CID	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Vedal Abdul Davis, a prisoner proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

Petitioner is in custody pursuant to a judgment entered in the 356th Judicial District Court of Hardin County, Texas. Petitioner was found guilty of aggravated assault with a deadly weapon. On November 18, 2010, petitioner was sentenced to 33 years of imprisonment. The judgment was affirmed on appeal, and the Texas Court of Criminal Appeals refused the petition for discretionary review on February 6, 2013.

Petitioner filed a state application for habeas relief on September 8, 2015. The Texas Court of Criminal Appeals denied the application on June 8, 2016.

The Petition

Petitioner filed this petition for writ of habeas corpus on September 14, 2016.[1] Petitioner contends his attorney provided ineffective assistance by failing to investigate before agreeing to a stipulation. Plaintiff alleges the indictment is void because two prior indictments were barred by the statute of limitations. Petitioner contends his attorney provided ineffective assistance of counsel on appeal by failing to challenge his own performance at the trial. Finally, petitioner contends he was denied a fair trial.

Analysis

Title 28 U.S.C. § 2254 authorizes the district court to entertain a petition for writ of habeas corpus on behalf of a person in custody pursuant to a state court judgment if the prisoner is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). There is a one year statute of limitations on federal petitions for writ of habeas corpus brought by state prisoners. 28 U.S.C. § 2244(d). The limitation period begins to run from the latest of: (1) the date on which the judgment became final; (2) the date on which an impediment to filing created by unconstitutional state action was removed; (3) the date on which the United States Supreme Court initially recognized the constitutional right if the right is retroactively applicable to cases on collateral review; or (4) the date on which the factual predicate of the claim could have been discovered by due diligence. 28 U.S.C. § 2244(d)(1)(A)-(D). The amendment also provides that the statute of limitations is tolled while a state post-conviction review or other collateral attack is pending. 28 U.S.C. § 2244(d)(2).

---

[1] A prisoner's pleading is considered filed as of the date it was delivered to prison officials for mailing. *Houston v. Lack*, 487 U.S. 266, 270 (1988); *Coleman v. Johnson*, 184 F.3d 398, 401 (5th Cir. 1999). Petitioner states that he placed the petition in the prison mail system on September 14, 2016.

Here, there was no impediment to filing caused by unconstitutional state action, and petitioner does not rely on a newly-recognized constitutional right or newly-discovered evidence. Therefore, the limitations period began to run on the date on which the judgment became final. Because petitioner did not file a petition for writ of certiorari, the judgment became final on May 7, 2013. *Ott v. Johnson*, 192 F.3d 510, 513 (5th Cir. 1999)(holding that a state conviction becomes final upon denial of certiorari by the United States Supreme Court or expiration of the time period for seeking certiorari). The limitations period began to run the next day, and it expired on May 7, 2014. The state habeas application did not toll the limitations period because it was filed after the statute of limitations had expired. This petition, filed on September 14, 2016, is untimely.

The statute of limitations may be equitably tolled in appropriate cases. *Holland v. Florida*, 560 U.S. 631, 130 S. Ct. 2549, 2562 (2010). Equitable tolling is only available if: (1) the petitioner diligently pursued his rights, and (2) extraordinary circumstances prevented timely filing. *Id.* Delays of the petitioner's own making are not "extraordinary circumstances." *Sutton v. Cain*, 722 F.3d 312, 316 (5th Cir. 2013). Excusable neglect and ignorance of the law do not justify equitable tolling. *Id.*

Petitioner contends his family retained an attorney to represent him during the state habeas proceedings. Petitioner maintained regular correspondence with the attorney and was aware that the state application had not been filed as of October 24, 2014, when petitioner received his final letter from the attorney's office. Plaintiff alleges he learned about the one-year statute of limitations for filing a federal habeas petition from another inmate in December of 2014. Instead of immediately filing a state application, petitioner waited until September 8, 2015 to file his *pro se* state application for habeas relief. After the state application was denied, petitioner waited an additional 3 months before filing his federal petition.

The lengthy periods of delay show that petitioner did not diligently pursue his rights. Nor has he demonstrated that extraordinary circumstances prevented him from filing a timely petition. As a result, he is not entitled to equitable tolling of the statute of limitations.

Recommendation

This petition for writ of habeas corpus should be dismissed as barred by the statute of limitations.

Objections

Within fourteen days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen days after service shall bar an aggrieved party from the entitlement of *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United Services Automobile Association,* 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this 30th day of September, 2016.

Zack Hawthorn
United States Magistrate Judge

"STATEMENT OF THE CASE"

APPENDIX-G

APPLICANT'S MOTION FOR REREARING DISMISSED
(COURT OF CRIMINAL APPEALS OF TEXAS)
AUSTIN, TEXAS-MOTION FOR REHEARING

"Appendix G."

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
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7/11/2016

DAVIS, VEDAL A **Tr. Ct. No. 20784-A** **WR-84,123-01**

Pursuant to Rule 79.2 (d), applicant's Motion for Reconsideration/Rehearing has been dismissed.

Abel Acosta, Clerk

6-4-3T

VEDAL A DAVIS
RAMSEY I UNIT - TDC # 1682276
1100 FM 655
ROSHARON, TX 77583

MIWNGB 77583

"STATEMENT OF THE CASE"

APPENDIX-H

DENIED APPLICANT'S APPLICATION
FOR WRIT OF HABEAS CORPUS
(COURT OF CRIMINAL APPEALS OF TEXAS)
AUSTIN, TEXAS-WRIT OF HABEAS CORPUS

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

6/8/2016
DAVIS, VEDAL A **Tr. Ct. No. 20784-A** **WR-84,123-01**

This is to advise that the Court has denied without written order the application for writ of habeas corpus.

Abel Acosta, Clerk

VEDAL A DAVIS
RAMSEY I UNIT - TDC # 1682276
1100 FM 655
ROSHARON, TX 77583

"STATEMENT OF THE CASE"

APPENDIX-I

ALCALA, J., FILED A DISSENTING OPINION
WHICH JOHNSON, J., JOINED.
(COURT OF CRIMINAL APPEALS OF TEXAS)
AUSTIN, TEXAS-DISSENTING OPINION

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-84,123-01

EX PARTE VEDAL A. DAVIS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 20784-A IN THE 356TH DISTRICT COURT
HARDIN COUNTY

ALCALA, J., filed a dissenting opinion in which JOHNSON, J., joined.

DISSENTING OPINION

This is another claim of ineffective assistance of counsel addressed by this Court based on pleadings that have been presented by a *pro se* litigant. This Court's judgment denies post-conviction habeas relief in this case. Instead, I would remand this case to the habeas court for the appointment of counsel in the interests of justice, permit counsel to amend applicant's ineffectiveness-claim pleadings, and decide the ultimate merits of applicant's claim after those events. I, therefore, respectfully dissent from this Court's judgment that summarily denies relief in this case.

In my dissenting opinion in *Ex parte Garcia*, I highlighted what I view as an ongoing

and widespread problem regarding the absence of appointed habeas counsel to assist indigent applicants in pursuing their colorable ineffective-assistance claims. *See Ex parte Garcia*, No. WR-83,681-01, 2016 WL 1358947 (Tex. Crim. App. Apr. 6, 2016) (Alcala, J., dissenting). I explained that, in many cases, the first opportunity for a defendant to challenge the effectiveness of his attorney arises in a post-conviction habeas proceeding, but, at that procedural juncture, an indigent applicant has no established constitutional right to appointed counsel. *See id.*, slip op. at 2. Given that many indigent applicants must proceed *pro se* on habeas, I observed that claims of ineffectiveness, even those that have merit, "will almost always fail because the *pro se* applicant is unaware of the legal standard and evidentiary requirements necessary to establish his claim." *Id.*

My dissenting opinion in *Garcia* merely recognized the problem that had already been highlighted by the Supreme Court in *Martinez v. Ryan*, in which it stated,

> Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting [such a] claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim.

Martinez v. Ryan, 132 S. Ct. 1309, 1317 (2012). In addition, the Supreme Court noted that prisoners "unlearned in the law" may not "comply with the State's procedural rules or may misapprehend the substantive details of federal constitutional law." *Id.* Moreover, it observed that prisoners, while confined to prison, are "in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside

the trial record." *Id.* In light of all these considerations, the Supreme Court concluded that, in order to present an ineffective-assistance claim in accordance with the State's procedures, "a prisoner likely needs an effective attorney." *Id.* Without the assistance of effective appointed counsel in a habeas proceeding, the Supreme Court recognized that such a proceeding may not be "sufficient to ensure that proper consideration [is] given to a substantial claim." *Id.* at 1318. This, it explained, was of particular concern, given that the right at stake, the right to the effective assistance of counsel, is a "bedrock principle in our justice system," without which the very fairness and accuracy of the underlying criminal proceeding cannot be guaranteed. *Id.* at 1317.

In *Garcia*, I urged this Court to take steps towards remedying this problem through the appointment of counsel for indigent applicants who have colorable ineffective-assistance claims. *Garcia*, 2016 WL 1358947, slip op. at 21. I observed that the statutory basis for appointing counsel under those circumstances already exists in Texas. In particular, I noted that Article 1.051 of the Texas Code of Criminal Procedure entitles an indigent habeas applicant to appointed post-conviction counsel whenever the habeas court determines that "the interests of justice require representation." *Id.* (quoting TEX. CODE CRIM. PROC. art. 1.051(d)). Based on that statutory authority, I suggested that this Court should remand any *pro se* habeas application to the habeas court for appointment of counsel in the interests of justice when "either the pleadings or the face of the record gives rise to a colorable, nonfrivolous [ineffective-assistance] claim." *See id.* I explained that such a course would

further the interests of justice by ensuring that substantial claims of ineffectiveness were given full and fair consideration by this Court on post-conviction review, thereby reducing the likelihood that violations of defendants' bedrock Sixth Amendment rights would go unremedied. *Id.*, slip op. at 16, 30.[1]

Here, in making my determination that applicant may have a colorable ineffective-assistance claim that requires the appointment of habeas counsel in the interests of justice,

---

[1] Perhaps it could be argued that, because there is no established constitutional right to habeas counsel, this Court should never remand for the appointment of counsel in the interests of justice. But this suggestion would seriously misunderstand the nature of the complaint before us. Here, the issue is the right to effective trial counsel and the systematic failure in Texas to provide an adequate vehicle to ensure that right. Direct appeal, when an indigent defendant has an absolute right to appointed counsel, fails to adequately protect the right to effective trial counsel because most ineffective-assistance claims require evidence outside the record, and the seventy-five-day window of time for resolving a motion for new trial is usually inadequate for that process. *See Trevino v. Thaler*, 133 S. Ct. 1911, 1915 (2013) (observing that the "structure and design of the Texas system[,] in actual operation, [ ] make it virtually impossible for an ineffective assistance claim to be presented on direct review") (citations omitted). And habeas-corpus review, when an indigent defendant has no absolute right to appointed counsel, similarly fails to adequately protect the right to effective trial counsel because counsel is usually needed to properly litigate ineffective-assistance claims. *See Martinez v. Ryan*, 132 S. Ct. 1309, 1317-18 (2012) (observing that, to adequately present an ineffective-assistance claim, a prisoner "likely needs an effective attorney"; without the assistance of counsel on post-conviction review, a prisoner's ability to present an ineffective-assistance claim is "significantly diminishe[d]"). Thus, unless indigent applicants are afforded the assistance of appointed habeas counsel to raise their substantial ineffectiveness claims, Texas essentially has no adequate vehicle for defendants to litigate that issue. The characterization of the Legislature's authorization of appointed habeas counsel in the interests of justice as a mere act of legislative grace fails to acknowledge the reality that, without some means of appointing habeas counsel in this limited area of ineffective-assistance-of-counsel challenges, Texas's system fails to ensure that defendants' Sixth Amendment rights are protected and thus raises the possibility of a constitutional violation on that basis. *See id.* at 1315 (noting that it is an open question of constitutional law "whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial"; the Constitution "may require States to provide counsel in initial-review collateral proceedings because 'in these cases . . . state collateral review is the first place a prisoner can present a[n ineffectiveness] challenge to his conviction,'" thus making the collateral proceeding his "'one and only appeal' as to an ineffective-assistance claim") (quoting *Coleman v. Thompson*, 501 U.S. 722, 755-56 (1991)).

I have (1) liberally construed applicant's pleadings that complained of ineffective assistance of counsel, and (2) examined applicant's complaints for substantive merit rather than for technical procedural compliance. This liberal approach to construing the pleadings is firmly recognized as appropriate in light of applicant's status as a *pro se* litigant. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (*pro se* complaint "is to be liberally construed"); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (per curiam) (a *pro se* inmate's petition should be viewed liberally and is not held to the stringent standards applied to formal pleadings drafted by attorneys); *see also Hernandez v. Thaler*, 630 F.3d 420, 426-27 (5th Cir. 2011) (filings by habeas petitioners are "entitled to the benefit of liberal construction"); *Brown v. Roe*, 279 F.3d 742, 746 (9th Cir. 2002) ("*Pro se* habeas petitioners are to be afforded the benefit of any doubt.") (citations omitted). The United States Tenth Circuit Court of Appeals has stated,

> The mandated liberal construction afforded to *pro se* pleadings "means that if the court can reasonably read the pleadings to state a valid claim on which the [petitioner] could prevail, it should do so despite the [petitioner's] failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements."

Barnett v. Hargett, 174 F.3d 1128, 1133 (10th Cir. 1999) (quoting *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)). It is well established that this practice of liberally construing *pro se* pleadings is a proper judicial function that does not transform a judge into an advocate for a habeas applicant. *See id.* (explaining that, although a court "should not assume the role of [an] advocate for the *pro se* litigant and may not rewrite a petition to include claims that were never presented," a court acts properly when it "look[s] carefully at the facts and the

pleadings in an effort to ascertain what occurred in prior state proceedings and the true nature of petitioner's claims").

In light of these principles, my review for whether an applicant may have a colorable claim that would justify the appointment of counsel in the interests of justice does not call upon this Court or the habeas court to make legal arguments for an applicant, nor does it require any court to become an advocate for him. Rather, by liberally reading the *pro se* pleadings and examining the face of the record to determine whether appointed counsel is required under the circumstances in order to ensure that an applicant's claims are given meaningful consideration, I am merely adhering to my judicial duties to afford *pro se* litigants wide latitude in pleading their claims and to uphold the requirements of the Code of Criminal Procedure that entitle applicants to appointed counsel when the interests of justice require it.

I further note that my proposed approach that liberally examines the pleadings and independently reviews the available record is a mild house-cat when compared to the lion's share of the much more burdensome independent judicial review of the record that has been approved of and conducted in Texas state courts for almost five decades in *Anders* cases. *See Anders v. California*, 386 U.S. 738, 744-45 (1967) (requiring appellate courts to conduct "a full examination of all the proceedings[ ] to decide whether the case is wholly frivolous," and stating that an appellate court must "pursue all the more vigorously its own review"); *Stafford v. State*, 813 S.W.2d 503, 509 (Tex. Crim. App. 1991). In *Anders* cases, this Court requires

appellate judges to independently review the record for any arguable grounds for appeal when an appointed attorney has filed a brief asserting that there are no arguable grounds, and if the judges' independent review of the record reveals that there are arguable grounds for appeal, then the appellate court must remand the case to the trial court for the appointment of new appellate counsel. *See Stafford*, 813 S.W.2d at 511 (under *Anders*, "after receiving a brief claiming that there are no arguable grounds for appeal, *the reviewing court* must review the record to make an independent determination"). A judge's vigorous independent review for any arguable grounds of appeal in an *Anders* case is required to ensure that an appointed attorney has not erroneously asserted that there are no arguable grounds for appeal. *See id.*. By requiring that judges vigorously and independently review the record for any arguable grounds of appeal in an *Anders* case, this Court has essentially already held that this type of review does not transform a judge into an advocate for a party, and that instead this is a review that honors a judge's oath to preserve, protect, and defend the Constitution and laws of the United States and of this state. And, although in *Anders* cases an appellate judge carries a heavy burden to examine the entire record for any arguable grounds for appeal on any of the numerous possible subjects that could be a basis for appeal, in contrast, in my proposed approach to post-conviction habeas cases, an appellate judge bears a much lighter burden to liberally examine the substance of the complaints in a *pro se* applicant's pleadings and to review the available record to determine whether those complaints are arguably

meritorious, and then only as to claims of ineffective assistance of counsel.[2] I have never suggested that, in conducting this review, a judge should be an advocate for an applicant or that a judge must exhaustively scour the record for any possible claims, and such an aspersion would unfairly oversimplify and mischaracterize my position.

Applying the foregoing principles here, I would hold that applicant's pleadings are adequate to give rise to a colorable ineffective-assistance claim so as to warrant the appointment of counsel in the interests of justice. Because he is *pro se*, applicant should not be faulted for failing to more particularly plead or prove the allegations in his application. *See Estelle*, 429 U.S. at 106 ("a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief") (citations omitted). I note that, if applicant is deprived of the opportunity to factually and legally develop his

---

[2] Of course, *Anders* cases are different in the sense that an indigent defendant has a constitutional right to effective appointed counsel at the direct-appeal stage, whereas there is no such right, as yet, to effective appointed counsel at the habeas stage, but that would be a far too simplistic rationale for disregarding the independent-review analysis here. As the Supreme Court has noted, the right at stake here is the right to effective trial counsel rather than the right to effective habeas counsel. *See Martinez*, 132 S. Ct. at 1318. Furthermore, as the Supreme Court has observed, the first time that a defendant in Texas likely can challenge the effectiveness of his trial attorney is in his initial habeas proceeding, thus making that proceeding more like a direct appeal as to the issue of ineffective assistance of counsel. *See Trevino*, 133 S. Ct. at 1915; *see also Martinez*, 132 S. Ct. at 1317 (observing that, when habeas proceeding is the first opportunity to raise an ineffectiveness claim, that proceeding "is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim"). Thus, the independent-review requirement that I propose bears more similarities to the *Anders* requirement than dissimilarities, in that both of them are concerned with whether an indigent defendant has arguable grounds to challenge his conviction and sentence as to those matters that he has the right to appeal in the first instance.

ineffective-assistance claim in the instant proceeding, then it is likely that he will be unable to do so in any future proceeding as a result of the statutory bar on subsequent writs. *See* TEX. CODE CRIM. PROC. art. 11.07, § 4. In order to afford applicant his one full bite at the apple in this initial habeas proceeding, and in order to ensure that applicant has been fully afforded his Sixth Amendment rights, I conclude that the interests of justice require appointed counsel and further proceedings under these circumstances. I, therefore, would not deny applicant relief at this stage but would instead remand this case to the habeas court for appointment of counsel and further proceedings as to his ineffective-assistance claim. Because the Court declines to do so and instead denies relief, I respectfully dissent.

Filed: June 8, 2016

Do Not Publish

"STATEMENT OF THE CASE"

APPENDIX-J

356TH DISTRICT COURT'S DOCKET SHEET
&
DENIAL TO DEFENDANT'S REPLY & REQUEST
FOR STATE COURT'S FACTS & CONCLUSIONS OF LAW
HARDIN COUNTY, TEXAS

DANA HOGG
HARDIN COUNTY DISTRICT CLERK

P.O. Box 2997
Kountze, Texas 77625

Phone: 409-246-5150
Fax: 409-246-5288
dana.hogg@co.hardin.tx.us

January 22, 2016

CERTIFIED MAIL:RRR

Mr. Vedal Davis
Ramsey One Unit
TDCJ #1682276
1100FM 655
Rosharon, Texas 77583

In re: 20784-A Vedal Davis

Dear Mr. Davis:

Enclosed please find a copy of the court's docket sheet, as well as the Judge's denial to Defendant's Reply and Request for State Court's Facts and Conclusions of Law.

Thank you.

Sincerely,

Dana Hogg

Dana Hogg

Enclosures

CRIMINAL DOCKET

No. 20784-A

S/M INC., DALLAS FORM CLD

Number of Case	STYLE OF CASE	ATTORNEYS	OFFENSE	DATE OF FILING Month	Day	Year
20784-A	THE STATE OF TEXAS vs.	David Sheffield State	11.07 Writ of Habeas Corp.	9	18	15
	Vedal A. Davis	Pro Se		Information, Index or Indictment		
				Fee Book Vol.	Page	
			Defendant			

Date of Orders Month	Day	Year	ORDERS OF COURT (Was Stenographer Used)	Minute Book Vol.	Page	WITNESSES
10	23	15	Court finds there are no controverted, previously unresolved facts material to the confinement of Δ applicant			
1	7	16	Deny Δ's Reply and Request for State Court's Facts & Conclusions of Law D			

CERTIFIED

I, DANA HOGG, District Clerk in and for HARDIN COUNTY, TEXAS, do hereby certify that the foregoing is a true and correct copy as same appears on record in my office.

Witness my Hand and Seal of Office, this the 22 day of January 2016

DANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS

By Deputy: Diane Morgan

DISTRICT COURT OF HARDIN COUNTY, TEXAS

"Mailed 11/13/2015"
VAD.

FILED FOR RECORD
2015 DEC 21 PM 1:59
DANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS
By Deputy

CAUSE NO. _____

EX PARTE	§	IN THE 356/88th
VEDAL ABDUL DAVIS	§	JUDICIAL DISTRICT COURT
Movant,	§	HARDIN COUNTY, TEXAS

MOTION TO AMEND
REPLY AND REQUEST FOR STATE COURT'S FACTS AND CONCLUSIONS OF LAW
IN CAUSE NUMBER 20,784-A WRIT OF HABEAS CORPUS

IN THE HONORABLE 356/88TH JUDICIAL DISTRICT COURT:

NOW COMES, VEDAL ABDUL DAVIS, Movant hereinafter,(Davis), in this his MOTION TO AMEND REPLY AND REQUEST FOR STATE COURT'S FACTS AND CONCLUSIONS OF LAW IN CAUSE NUMBER 20,784-A WRIT OF HABEAS CORPUS, AND shows the court the following:

I. HISTORY OF THE CASE.

Davis pled NOT GUILTY to the charge Aggravated Assault, a 2 to 20 year second degree punishment range on November 18, 2010. Davis was found guilty by jury and sentenced to 33 years prison November 18, 2010 and appealed his judgment July 25, 2012 the Appeals court in 09-10-00538-CR AFFIRMED his appeal on March 19, 2013. Davis filed his FIRST 11.07 Writ of habeas corpus September 8, 2015 waited the prospective 35 days for processing thereof and contacted the Hardin County 356/88 Judicial District Clerk's office for "status" report of the progress of his Writ, where he then received answer, 11-02-2015, that his filing had been presented to the Judge's Desk on, October 22, 2015, TO BE ADJUDICATED.

Denied

II. DAVIS' ARGUMENT:

Davis argues that he has right to his Writ of habeas corpus being heard because he has right to his appeal since his No.20,784 Cause is void and more importantly the 356/88 Judicial District Court had no "jurisdiction" over him or the subject matter in the cause since the cause was born in violation of Tex.Code Crim.Proc.Ann.art. 12.05(b) then in violation of clearly established law Hernandez v. State, 127 S.W.3d, 768,774(Tex.Crim.App.2004).

Davis also argues that the trial court had no "jurisdiction" to render judgment against him because his attorney had rendered ineffective assistance of counsel "prior" to his alleged "stipulation" that he thought was stipulating to a enhancement paragraph when it actually was stipulation to the tolling of Davis' Unprosecutable Barred by Statute of Limitations indictment 18,564 and 18,640 ,(See Davis' Writ application.,(application),p.1."Memorandum In Support of Ground One") See also Reporter's Record Volume 1 thru 8);(Const.Amend.6), (RR.Vol.5.,p.16.,Lines 13-25 to p.17., Lines 1-13);(Strickland v. Washington 104 S.Ct. 2052,2053(1984)), (See 18,564, 18,640 and 20,784 INDICTMENTS).

Davis finally argues that he should be granted request for his 20,784-A Facts and Conclusions of Law from the 356/88 Judicial District Court because "absent" his being able to "confront" THE ISSUES THEREIN HIS Constitutional Amendment 14 rights to Due Process will certainly be violated by the court(s) and a Fundamental Miscarriage of Justice will occur, where procedural (law), 1.14(b),(See Proctor v. State 967 S.W.2d 840(Tex.Crim. App.1998), is used unconstitutionlly to allow "void" indictment.

III. THE NECESSITY FOR AN EVIDENTIARY HEARING & EXPANSION OF THE RECORD:

Davis avers that there is need for Evidentiary Hearing and Expansion of the record because the jurisdiction of the court is at issue first where Davis shows he stood before the court in 20,784 without effective assistance of counsel during the Pre-Trial phase of his trial where his attorney failed to perform an independent investigation into the legal facts, circumstances, pleadings, and laws surrounding the Pre-Trial Motions for (a.) Amendment and (b.) Tolling paragraphs, Davis showing that he is denied Sixth Amendment protections requiring his effective assistance counsel at critical stages of his trial process.(Strickland Id.) (Const.Amend.6);(Application 20,784-A Mem.Ground One,p.1-3)

Davis avers that he timely and properly Motioned the 356/88 Court for Evidentiary Hearing in this cause 20,784 and gave good cause showing why the Hearing should take place and additionally shows the court that "absent" Evidentiary Hearing to ascertain whether the Court had jurisdiction in 20,784 pre-trial amendment, whether Davis' attorney DID or DID NOT render ineffective assistance at pre-trial stage, and wnether the 20,784 is actually born of a legal "prior" indictment or it is perceived so and void as Davis presents presents subject matter evidence that if proven true would warrant Davis relief requested and avoid a Fundamental Miscarriage of Justice and violation of Davis' Due Process of Law as required in Const.Amend.6,14) respectively. (See Motion For Evidentiary Hearing,this application-20,784-A; attachment)

(See also Ex parte Williams, 65 S.W.3d 656,658(Tex.Crim.App.2001), where Davis establishes by a preponderance of the evidence he presents to the court that the error made by his attortney contributed to his conviction and punishment., and nis relief requested should prevail because if proven true he would be entitled to that relief as in Ex parte Maldonado, 688 S.W.2d 114,116(Tex.Crim.App.1985).

Davis has established a 'factual basis' for his innocence the validity of the court's jurisdiction,his attorney's ineffective assistance at pre-trial hearing and 20,784 born illegally against and in violation of Tex.CCP. 12.05(b) all challenges to his Due Process of Law, illegal restraint under void judgment, and the court's duty to afford him a fair and impartial trial process. (Const.Amend.6&14);(Strickland Id.);(Ex parte Brooks 219 S.W.3d 396,401(Tex.Crim.App.2007));(Tex.CCP.12.05(b)).

Concluding Davis avers that presents his need to investigate, cross-examine, present evidence, present witnesses before the court that would substantiate his claims where it is established where prior court holds "Denial of habeas corpus relief without a hearing constitutes an arbitrary and unreasonable action" Vernon's Ann.C.C.P. art 11.05, Ex parte Williams, 630 S.W.2d at 83, pet. for discretionary review refused.);(E.D.Tex.1986, Streetman v. McCotter 634 F.Supp. 290 reversed, 812 F.3d 950, rehearing denied, 818 F.2d 865, on remand 674 F.Supp. at 299)

Davis avers that his need to specifically acquire evidence that 20,784 is not created from a "subsequent Indictment" and 18,640 is NOT subsequent indictment to properly and/or legally amend or toll 20,784 and that he is in illegal restraint because of the same.(See 18,564, 18,640 and 20,784);(Tex.CCP.12.05(b)).

IV. CONCLUSION:

Davis avers that because the 356/88 Judicial District Court denies him notice through it's Facts and Conclusions of Law in 20,784-A he is thus "denied due process" of law and denied "confrontation" of what the court filed within the Texas Court of Criminal Appeals for review by the court.(Const.Ament.14);(Streetman Id.);(Ex parte Williams Id. at 83)

Davis avers quoting holdings in V.A.C.C.P.art.11.05 and Ex parte Williams, Id at 83 "Denial of habeas corpus relief without a hearing constitutes an arbitrary and unreasonable action Vernon's Ann.C.C.P.art 11.05,and Williams Id. exacting the need for court intervention at least to the hearing level to satisfy reasonable action by the court.(Williams Id),;(Const.Amend.6&14) VACCP.art 11.05)(Stretman Id.)(Maldonado Id.)

Wherefore premises considered, Davis prays that this Court GraNt HIS Motion to Amend Reply and allow a hearing upon the merits of his claims made within this Motion and his prior Writ No.20,784-A.

CERTIFIED

I, DANA HOGG, District Clerk in and for HARDIN COUNTY, TEXAS, do hereby certify that the foregoing is a true and correct copy as same appears on record in my office.

Witness my Hand and Seal of Office, this the 22 day of January

DANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS

By Deputy: Jane Morgan

Respectfully Submitted,

Vedal A. Davis

Vedal Abdul Davis pro se
TDCJ-ID# 01682276
Ramsey One Unit
1100 F.M. 655
Rosharon, Texas 77583

UNSWORN DECLARATION

I, VEDAL ABDUL DAVIS, PRO SE IN THIS ACTION, DECLARES THAT THE INFORMATION IN THIS MOTION TO AMEND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND SINGED TO BELOW UNDER PENALTY OF PERJURY THIS 13 DAY OF NOVEMBER ,2015.

Vedal A Davis

Vedal Abdul Davis pro se

"STATEMENT OF THE CASE"

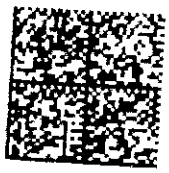
APPENDIX-K

No. PD-1205-12
STYLE, DAVIS; VEDAL
(COURT OF CRIMINAL APPEALS OF TEXAS)
AUSTIN, TEXAS-PETITION FOR DISCRETIONARY REVIEW

"Appendix K."

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

OFFICIAL BUSINESS
STATE OF TEXAS
PENALTY FOR
PRIVATE USE



UNITED STATES POSTAGE
PITNEY BOWES
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FEB 06 2013
MAILED FROM ZIP CODE 78701

Wednesday, February 06, 2013
Re: Case No. PD-1205-12
COA#: 09-10-00513-CR TC# 20784
STYLE: DAVIS, VEDAL

On this day, the Appellant's petition for discretionary review has been refused.
JUDGE COCHRAN WOULD GRANT

Abel Acosta, Clerk

14A-007

VEDAL DAVIS
TDC# 1682276
8101 FM 969
AUSTIN TX 78724

"STATEMENT OF THE CASE"

APPENDIX-L

NO. 09-10-00538-CR
VEDAL DAVIS V. THE STATE OF TEXAS
(NINTH COURT OF APPEALS OF TEXAS)
BEAUMONT, TEXAS-MANDATE

"Appendix L."

IN THE NINTH COURT OF APPEALS

09-10-00538-CR

Vedal Davis, Appellant
v.
The State of Texas, Appellee

Appeal from the 356th District Court of Hardin County, Texas
Trial Cause No. 20784

MANDATE

TO THE 356TH DISTRICT COURT OF HARDIN COUNTY, GREETINGS:

Before our Court of Appeals, on July 25, 2012, the cause came upon appeal to revise or reverse your judgment was determined; and therein our said Court made its order in these words:

"This Court has concluded there was no reversible error in the judgment. It is therefore ordered that the judgment of the Court below is in all things **AFFIRMED**. A copy of this judgment shall be certified below for observance."

WHEREFORE, WE COMMAND YOU to observe the order of our said Court in this behalf, and in all things have it duly recognized, obeyed and executed.

BY ORDER OF THE NINTH COURT OF APPEALS, with the Seal thereof affixed, at the City of Beaumont, Texas, this March 19, 2013.

CAROL ANNE HARLEY
CLERK OF THE COURT

"STATEMENT OF THE CASE"

APPENDIX-M

356TH DISTRICT COURT MOTION TO AMEND
INDICTMENT IN CAUSE NO. 18564
HARDIN COUNTY, TX-INDICTMENT NO. 18564

"Appendix M."

CAUSE NO. 18564

09 MAY -6 AM 9:47

VICKI JOHNSON
DISTRICT CLERK
HARDIN COUNTY, TEXAS
BY

THE STATE OF TEXAS	§	IN THE 356TH JUDICIAL
VS.	§	DISTRICT COURT
VEDAL DAVIS	§	OF HARDIN COUNTY

MOTION TO AMEND INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now, the State of Texas, by and through her Assistant District Attorney, Pat Hardy, and presents this her Motion to File an Amended Indictment and, for cause, would show the following:

I.

The State of Texas, pursuant to C.C.P., Art. 28.10, tenders Exhibit "A", a proposed Amended Indictment in the above styled matter, which alters either the form or substance of the original Indictment but which does not allege a new offense. This Amended Indictment would not allege a new or separate offense and the granting of this Motion will not impair the rights of the Defendant.

II.

This Motion to Amend is filed because it currently reads "then and there intentionally or knowingly cause bodily injury to Lechadrian Cole by striking him with his motor vehicle, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a motor vehicle, during the commission of said assault." It should read, "then and there intentionally, knowingly or recklessly cause bodily injury to Lechadrian Cole by striking him with his motor vehicle, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a motor vehicle, during the commission of said

DISTRICT COURT OF HARDIN COUNTY, TEXAS

assault. And it is further presented in and to said Court that, prior to the commission of the aforesaid offense (hereafter styled the primary offense), on the 18th day of February, 1998, in cause number 13718 in the 356th District Court of Hardin County, Texas, the defendant was convicted of the felony offense of possession of a controlled substance. And it is further presented in and to said Court that, prior to the commission of the primary offense, and after the conviction in cause number 13718 was final, the defendant committed the felony offense of Delivery of a controlled substance and was convicted on the 4th day of October 2004, in cause number 15093 in the 88th District Court of Hardin County, Texas."

III.

Filing of this Motion to Amend Indictment is in compliance with C.C.P. Art. 28.10b, and the granting of this Motion to Amend Indictment will not prejudice the rights of the defendant.

WHEREFORE, PREMISES CONSIDERED, the State of Texas, movant herein, prays that this Motion to File Amended Indictment be granted, that the original Indictment be amended as shown in the attached Exhibit "A" and then filed in the papers of this cause as the States's trial pleading, that no continuance be granted from the current trial setting as a result of the granting of this Motion, and for such other and further relief as justice may require.

Respectfully Submitted,

Pat Hardy
Assistant District Attorney
Hardin County, Texas
P. O. Box 1409
Kountze, Texas 77625
(409) 246-5160

DISTRICT COURT OF HARDIN COUNTY, TEXAS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing State's Motion to Amend the Indictment was delivered to Tim McDonough, Attorney for the Defendant, on this the 6th day of May, 2009.

Pat Hardy
Assistant District Attorney

DISTRICT COURT OF HARDIN COUNTY, TEXAS

CAUSE NO. 18564

THE STATE OF TEXAS	§	IN THE 356TH JUDICIAL
VS.	§	DISTRICT COURT
VEDAL DAVIS	§	OF HARDIN COUNTY

ORDER

On this the 7th day of May, 2009 came to be heard the State's Motion for To Amend Indictment and the same is hereby;

GRANTED / ~~DENIED~~.

SIGNED this 7th day of May, 2009.

JUDGE PRESIDING

CERTIFIED

I, DANA HOGG, District Clerk In and for HARDIN COUNTY, TEXAS, do hereby certify that the foregoing is a true and correct copy as same appears on record in my office.

Witness my Hand and Seal of Office, this the 6 day of January 2020

DANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS

By Deputy:

DISTRICT COURT OF HARDIN COUNTY, TEXAS

CAUSE NO. 18,564

THE STATE OF TEXAS
VS.
VEDAL ABDUL DAVIS

07 AUG 14 PM 2:42

VICKI JOHNSON
DISTRICT CLERK
HARDIN COUNTY, TEXAS
BY Debbie Stephens

DISTRICT COURT OF
HARDIN COUNTY, TEXAS

ADDRESS:
320 N. Beech St.
Kountze, Tx 77625
B/M DOB: 11-11-76
DL #07022137

OFFENSE:
Agg. Assault with a deadly weapon
22.02 (a)(2) 2nd degree

BAIL_____

****

INDICTMENT

****

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS for the County of Hardin, State of Texas, duly organized as such at the APRIL Term, A.D., 2007, of the 356TH/88TH District Court of Hardin County, Texas, in County and State, upon oath in said Court present that **VEDAL ABDUL DAVIS**, hereafter styled the defendant, heretofore on or about **MARCH 16TH, 2007** in Hardin County, Texas did;

then and there intentionally or knowingly cause bodily injury to Lechadrien Cole by striking him with his motor vehicle, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a motor vehicle, during the commission of said assault.

AGAINST THE PEACE AND DIGNITY OF THE STATE OF TEXAS.

Bill Westbrook
FOREMAN OF THE GRAND JURY

CERTIFIED

I, DANA HOGG, District Clerk in and for HARDIN COUNTY, TEXAS, do hereby certify that the foregoing is a true and correct copy as same appears on record in my office.

Witness my Hand and Seal of Office, this the 6 day of January, 2020

DANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS
By Deputy: Kathleen Cano

DISTRICT COURT OF HARDIN COUNTY, TEXAS

CAUSE NO. 18564

THE STATE OF TEXAS
VS.
VEDAL DAVIS

DISTRICT COURT OF
HARDIN COUNTY, TEXAS

ADDRESS:
320 BEECH ST
KOUNTZE, TX 77625
B/M DOB: 11-11-76
DL #07022137

OFFENSE:
AGG ASSAULT W/ DEADLY WEAPON
22.02
BAIL: _____

****

INDICTMENT

****

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS for the County of Hardin, State of Texas, duly organized as such at the April Term, A.D., 2008 of the 356th/88th District Court of Hardin County, Texas, in County and State, upon oath in said Court present that VEDAL DAVIS, hereafter styled the defendant, heretofore on or about AUGUST 21ST 2007 in Hardin County, Texas did;

then and there intentionally, knowingly or recklessly cause bodily injury to Lechadrian Cole by striking him with his motor vehicle, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a motor vehicle, during the commission of said assault.

And it is further presented in and to said Court that, prior to the commission of the aforesaid offense (hereafter styled the primary offense), on the 18th day of February, 1998, in cause number 13718 in the 356th District Court of Hardin County, Texas, the defendant was convicted of the felony offense of possession of a controlled substance.

And it is farther presented in and to said Court that, prior to the commission of the primary offense, and after the conviction in cause number 13718 was final, the defendant committed the felony offense of Delivery of a controlled substance and was convicted on the 4th day of October 2004, in cause number 15093 in the 88th District Court of Hardin County, Texas.

AGAINST THE PEACE AND DIGNITY OF THE STATE OF TEXAS.

CERTIFIED

I, DANA HOGG, District Clerk in and for HARDIN COUNTY, TEXAS, do hereby certify that the foregoing is a true and correct copy as same appears on record in my office.

Witness my Hand and Seal of Office, this the 6 day of January 2020

DANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS

By Deputy: _____

_____
FOREMAN OF THE GRAND JURY

DISTRICT COURT OF HARDIN COUNTY, TEXAS

"STATEMENT OF THE CASE"

APPENDIX-N

356TH DISTRICT COURT MOTION TO AMEND
INDICTMENT IN CAUSE NO. 18640
HARDIN COUNTY, TX-INDICTMENT NO. 18640

CAUSE NO. 18640

THE STATE OF TEXAS	§	IN THE 356TH JUDICIAL
VS.	§	DISTRICT COURT
VEDAL ABDUL DAVIS	§	OF HARDIN COUNTY

MOTION TO AMEND INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now, the State of Texas, by and through her Assistant District Attorney, Pat Hardy, and presents this her Motion to File an Amended Indictment and, for cause, would show the following:

I.

The State of Texas, pursuant to C.C.P., Art. 28.10, tenders Exhibit "A", a proposed Amended Indictment in the above styled matter, which alters either the form or substance of the original Indictment but which does not allege a new offense. This Amended Indictment would not allege a new or separate offense and the granting of this Motion will not impair the rights of the Defendant.

II.

This Motion to Amend is filed because it currently reads "then and there intentionally or knowingly cause bodily injury to Lechadrien Cole by striking him with his motor vehicle, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a pipe, during the commission of said assault. And it is further presented in and to said Court that, prior to the commission of the aforesaid offense, (hereafter styled the primary offense), on the 18th day of February, 1998, in cause number 13718 in the 356th District Court of Hardin County, Texas, the defendant was convicted of the felony offense of possession of a controlled substance. And it is further presented in and to said

Court that, prior to the commission of the primary offense, and after the conviction in cause number 13718 was final, the defendant committed the felony offense of delivery of a controlled substance and was convicted on the 4th day of October, 2004, in cause number 15093 in the 88th District Court of Hardin county, Texas." It should read, "then and there intentionally or knowingly cause bodily to George Stewart by striking him with a pipe, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a pipe, during the commission of said assault. And it is further presented in and to said Court that, prior to the commission of the aforesaid offense, (hereafter styled the primary offense), on the 17th day of February, 1998, in cause number 13718 in the 356th District Court of Hardin County, Texas, the defendant was convicted of the felony offense of possession of a controlled substance. And it is further presented in and to said Court that, prior to the commission of the primary offense, and after the conviction in cause number 13718 was final, the defendant committed the felony offense of delivery of a controlled substance and was convicted on the 4th day of October, 2004, in cause number 15093 in the 88th District Court of Hardin county, Texas."

III.

Filing of this Motion to Amend Indictment is in compliance with C.C.P. Art. 28.10b, and the granting of this Motion to Amend Indictment will not prejudice the rights of the defendant.

WHEREFORE, PREMISES CONSIDERED, the State of Texas, movant herein, prays that this Motion to File Amended Indictment be granted, that the original Indictment be amended as shown in the attached Exhibit "A" and then filed in the papers of this cause as the States's trial pleading, that no continuance be granted from the current trial setting as a result of the granting of this Motion, and for such other and further relief as justice may require.

Respectfully Submitted,

Pat Hardy
Assistant District Attorney
Hardin County, Texas
P. O. Box 1409
Kountze, Texas 77625
(409) 246-5160
State Bar # 08988600

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing State's Motion to Amend the Indictment was delivered to Tim McDonough, Attorney for the Defendant, on this the 11th day of May, 2009.

Pat Hardy
Assistant District Attorney

CAUSE NO. 18640

THE STATE OF TEXAS
VS.
VEDAL ABDUL DAVIS

DISTRICT COURT OF
HARDIN COUNTY, TEXAS

ADDRESS:
320 N. BEECH ST
KOUNTZE, TX 77625
B/M DOB: 11-11-76
DL #07022137

OFFENSE:
AGG ASSAULT W/DEADLY WEAPON
22.02 2ND DEGREE
BAIL: _____

****

INDICTMENT

****

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS for the County of Hardin, State of Texas, duly organized as such at the October Term, A.D., 2007 of the 356th/88th District Court of Hardin County, Texas, in County and State, upon oath in said Court present that VEDAL ABDUL DAVIS, hereafter styled the defendant, heretofore on or about MARCH 16, 2007 in Hardin County, Texas did;

then and there intentionally and knowingly cause bodily injury to George Stewart by striking him with a pipe, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a pipe, during the commission of said assault.

And it is further presented in and to said Court that, prior to the commission of the aforesaid offense, (hereafter styled the primary offense), on the 17th day of February, 1998, in cause number 13718 in the 356th District Court of Hardin County, Texas, the defendant was convicted of the felony offense of possession of a controlled substance.

And it is further presented in and to said Court that, prior to the commission of the primary offense, and after the conviction in cause number 13718 was final, the defendant committed the felony offense of delivery of a controlled substance and was convicted on the 4th day of October, 2004, in cause number 15093 in the 88th District Court of Hardin county, Texas.

CERTIFIED

AGAINST THE PEACE AND DIGNITY OF THE STATE.

DANA HOGG, District Clerk in and for HARDIN COUNTY, TEXAS, do hereby certify that the foregoing is a true and correct copy as same appears on record in my office.

Witness my Hand and Seal of Office, this the 17 day of _____

FOREMAN OF THE GRAND JURY

DANA HOGG, DISTRICT CLERK
HARDIN COUNTY, TEXAS

By Deputy: _____

IMAGED

CAUSE NO. 13,640

THE STATE OF TEXAS
VS.
VEDAL ABDUL DAVIS

DISTRICT COURT OF
HARDIN COUNTY, TEXAS

ADDRESS:
320 N. Beech St.
Kountze, Tx 77625
B/M DOB: 11-11-76
DL #07032137

OFFENSE:
Agg. Assault with a deadly weapon
22.02 (a)(2) 2nd degree
BAIL_____

****

INDICTMENT

****

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS for the County of Hardin, State of Texas, duly organized as such at the OCTOBER Term, A.D. 2007 of the 356TH/88TH District Court of Hardin County, Texas, in County and State, upon oath in said Court present that VEDAL ABDUL DAVIS, hereafter styled the defendant, heretofore on or about MARCH 16TH, 2007 in Hardin County, Texas did;

then and there intentionally or knowingly cause bodily injury to ~~Escandrien Cole~~ George Jay Stewart by striking him with ~~his vehicle~~ a pipe, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a pipe, during the commission of said assault.

And it is further presented in and to said Court that, prior to the commission of the aforesaid offense (hereafter styled the primary offense), on the 18th day of February, 1998, in cause number 13718 in the 356th District Court of Hardin County, Texas, the defendant was convicted of the felony offense of Possession of a controlled substance.

And it is further presented in and to said Court that, prior to the commission of the primary offense, and after the conviction in cause number 13718 was final, the defendant committed the felony offense of Delivery of a controlled substance and was convicted on the 4th day of October, 2004, in cause number 15093 in the 88th District Court of Hardin County, Texas.

AGAINST THE PEACE AND DIGNITY OF THE STATE OF TEXAS.

Larry L. Carlson
FOREMAN OF THE GRAND JURY

"REASONS FOR GRANTING THE PETITION"

APPENDIX-O

LETTERS FROM MATTHEW R. RAY
LAW OFFICE OF J.W.O. CAMPBELL
PASADENA, TX-HIRED TO FILE DAVIS' ORIGINAL 11.07. WRIT

July 8 2013

To: VEDAL DAVIS, #01682276
WILLIAM P CLEMENTS UNIT
9601 SPUR 591
AMARILLO, TX 79107

LST LETTER

From: Matthew R. Ray
Parole Consultant & Paralegal
Law Office of J.W.O. Campbell
132 Campbell Ave
Pasadena, TX 77502

NO DATE

Dear Mr. Davis,

I wrote you a letter while you were at the Travis State Jail, but I see you have been transferred so I'm writing you again (often it takes a long time, if ever, for a letter to "catch up" when someone is transferred).

We have been hired by your family to represent you in your upcoming Writ of Habeas Corpus. Basically, in this writ, we will be arguing that the sentencing portion of your case was unfair, due to several reasons, the main reason being ineffective assistance of counsel. Basically, we're saying your lawyer did not represent you properly and made some mistakes.

I apologize for not writing you sooner, but I want you to be rest assured we are on your case. I have done the legal research needed to file your writ, and we have everything ready to go.

If you wish to write back, please address your letters to us as follows:

LAW OFFICE OF JWO CAMPBELL
TBC# 03704500
132 CAMPBELL AVE
PASADENA, TX 77502

On the bottom of the envelope, be sure to write LEGAL MAIL.

You family has already paid us $2300, so all we need is the remaining $700 and then we will be able to file your writ. We do look forward to helping you in this matter, and hopefully getting you home to your family much sooner than expected!

Matthew Ray

2nd Letter

From: Law Office of JWO Campbell
Matthew R. Ray, Paralegal
132 Campbell Ave.
Pasadena, TX 77502
713.487.7750, Tel
888.371.9281, Fax
iahjwo@gmail.com, Email

To:
Mr Vedal Davis
TDC# 01682276
Clements Unit

Re: Update on your writ case

Monday, August 26, 2013

Dear Mr Davis :

I wanted to update you on your writ case with our office. Basically, we have everything ready to file, however we have not received the full payment yet. Out of the $3000, we still need the final $700. I spoke to Ms. Mary Reece today and she said they would be getting that payment as soon as they can. Please understand, we do not mind waiting – I just wanted to let you know what the holdup is so you didn't think it was us.

PLEASE NOTE OUR NEW ADDRESS! Please write any future letters to the following address:

Law Office of JWO Campbell
132 Campbell Ave.
Pasadena, TX 77502

I have included some flyers – if you know anyone else needing writ help, or representation for their upcoming parole review, please pass them one of our flyers. The flyers are already perforated for easy tearing. Thank you!

Sincerely,

Matthew R. Ray

January 7, 2014

3rd Letter

From: Law Office of JWO Campbell
Matthew R. Ray, Paralegal
132 Campbell Ave.
Pasadena, TX 77502
713.487.7750, Tel
888.371.9281, Fax
iahmatt@gmail.com, Email

To: Mr Vedal Davis
TDC# 01682276
Clements Unit

Re: Response to Your Letter

Dear Mr. Davis,

I am responding to your letter we received today. We are happy to hear from you! Regarding your writ, there have been some delays unfortunately. The first delay was we were waiting on another ruling in a different court that we found that raised a few of the issues we are using in your writ. If another court decides favorably on any of the issues, then it makes your writ stronger because we can basically show in your writ what the other court has done. The main issue was the "statute of limitations" issue which we plan to use in your writ.

That court has not made a decision yet. So, we may choose to go ahead and file your writ just based on your issues – however, if we were able to show in your writ where another court ruled similarly, that would help you. Basically we could say "That court overturned that persons conviction, therefore your court should do the same."

TRUE

Another issue is, effective January 1, 2014 the rules for filing writs changed. There's a whole new format that we now have to follow in filing the "application for a writ". The good news is, we've carefully reviewed the new rules, so any writs we file (including yours) will comply with the new rules – failing to comply with the new rules could get the writ "thrown out". We are updating our software to ensure the writs we make comply with these new rules, I expect this will take a few more weeks.

I know that hearing about delays while you're incarcerated doesn't sound very good. However, please know that the basic reason we've delayed is to make absolutely sure that we get this writ done right. There's only one chance at filing this writ - if it doesn't work and they uphold your sentence, we cannot file any more writs. As you know, a writ, even with good issues, is still a longshot – still, by making sure we get it right and do it well we can increase your chances of succeeding with the writ.

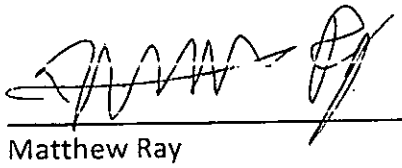
Please hang in there. You mentioned a letter you wrote that got no reply – I apologize for that. We were having issues with our mail about a month ago – there were several letters we never got. Anytime you have a question or need an update, please write us, and I WILL get a reply back to you within a day or two after we receive the letter. Please be sure to address your letters ONLY to J.W.O. Campbell, Attorney at Law. i.e.

JWO Campbell, Attorney
132 Campbell Ave
Pasadena, TX 77502

And write "LEGAL MAIL" along the bottom.

We have a new system in place that ensures any mail we receive from inmates is immediately processed, backed up on our secure computers, and alerts us to respond – so this is how I am able to assure you a much faster response than in the past.

While personally, I think we should wait for the other court to make it's decision, which could really help your case, I will let you decide. Would you rather us wait, or would you rather us go ahead and file the writ with what we have now? Please write back and let me know.



Matthew Ray

Law Office of J.W.O. Campbell
132 Campbell Ave
Pasadena, TX 77502
713.487.7750, Tel
888.371.9281, Fax

4th Letter

Date:
August 25, 2014

Davis, Vedal
TDC # 01682276
William P. Clements Unit
9601 Spur 591
Amarillo, Texas 79107-9606

Re: Case Update

Dear Vedal Davis:

I wanted to write you to update you on your case. Please accept my apologies, we did write you a letter before this one however it has been returned due to a postage error on our part.

Unfortunately, we've had some unforeseen delays on your case, primarily due to our not having the trial transcripts. Although we do have a brief prepared by Wright and Wright, we do not have the transcripts themselves, which is an important part in any appeal / writ where there is an actual jury or judge trial.

We had been attempting to contact Wright and Wright with no avail. It was then recently in speaking with your brother, Kenrix Davis, that he told me another law firm, Laine and Laine and particularly, Mr. Brian Laine, had been assigned your case AFTER Wright and Wright. We were not aware of this third law firm. Both myself and your family are in the process of trying to contact Mr. Brian Laine so we can get your file / transcripts from them.

We've had some communications issues in this case, and so I told Mr. Kendrix Davis that he and I would speak every week on Wednesday, even if there are no new developments, just to ensure we're communicating every week and to keep him updated on the progress from this point forward. We will work as quickly as we can to get this writ finished and filed as soon as we have everything we need to do this, and do it right. You only get one chance at this writ, so it's best if we make sure we do it right.

Thank you for your patience in this matter, I do apologize for the delays. I have spoken to and updated most of your family like Mary Reese and Turino. MY main point of contact will continue to be Kendrix, with whom I will speak weekly with every Wednesday until this writ is filed. Thank you again!

Matthew R. Ray, Paralegal
Law Office of JWO Campbell

Law Office of J.W.O. Campbell
132 Campbell Ave
Pasadena, TX 77502
713.487.7750, Tel
888.371.9281, Fax

5th + Last Letter

Date:
10/24/2014

Davis, Vedal
TDC # 01682276
William P. Clements Unit
9601 Spur 591
Amarillo, Texas 79107-9606

Re: Update on Case – Received Letter

Dear Vedal Davis:

I've been communicating off and on with different members of your family, including Kendic and Mary Reece. As you know from my last letter, we're at a stand still without the transcript. Basically, I'll speak to a family member and they'll tell me they're going to go ask about the transcript, and then some time goes by and they want an update on the case. This has created a lot of miscommunication and misunderstanding regarding what's going on, and whose doing what. I have tried to contact Wright & Wright because they're the ones who actually prepared any post-conviction briefs on this case, and they would be expected to have the transcript.

I received a letter from you that was postmarked September 5, 2014. I just received it on Friday, October 17, 2014. I think part of the hold up was that it was addressed to me personally – I am a paralegal, and as such letters to me directly are not protected by the attorney client privilege. Please be sure to address your letters as follows:

Law Office of JWO Campbell
132 Campbell Ave.
Pasadena, TX 77502

Your letters addressed like that above will reach me, since I process all the incoming mail. The only thing I can think of as to why the letter from September got held up so long is that the TDCJ held it up. Either that or it was something with the postal service.. either way, I wanted you to know that it just recently came in, so we were not ignoring it or you!

The latest call I got was from Mary Reece, she said that she'd go by Brian Laine office and inquire about the transcripts, because it was her understanding he'd "returned them to the courthouse". The transcripts can cost a lot of money to get a copy of – it is not included in our price. Mary indicated she thought it was – however in your case we quoted the price based on the fact another firm already had a file including transcripts they'd send us. I'm not trying to get any more money – if there is a way the district clerk can let me take a look at the transcripts they have in the courthouse, I can take notes on what I need and be done with it – yes, I would travel from Houston to Hardin County to do this. I'm willing to do this and not charge for it – if that's a way I can get what's needed.

I will write more soon – within next day or two. I plan to do some work on your case this weekend and work with what you've mentioned. Our goal is still to get this done, and get it done right. I am carefully keeping track of all calls / letters / communications in this case in our case management system – if you you'd like a copy of the records of whose called , when they called, and what was discussed please let me know.

Law Office of J.W.O. Campbell
132 Campbell Ave
Pasadena, TX 77502
713.487.7750, Tel
888.371.9281, Fax

Okay that's all I got for this letter, I will follow up very shortly with more.

Matthew R. Ray, Paralegal
Law Office of JWO Campbell

"REASONS FOR GRANTING THE PETITION"

APPENDIX-P

DAVIS' AFFIDAVIT IN SUPPORT OF-TO STATE BAR OF TEXAS
AND
LETTERS FROM THE STATE BAR OF TEXAS
STATE BAR OF TEXAS-AWARDING DAVIS' FAMILY MONEY BACK

AFFIDAVIT IN SUPPORT OF
Office Of The Chief Disciplinary Counsel
State Bar of Texas
Grievance Form

I, Vedal Abdul Davis, through my family,(Linda Davis), HIRED 'through' the J.W.O. Campbell Attorney at Law Office, Mr. MATTHEW R. RAY, a representative of J.W.O. Campbell for the purpose of preparing, and filing my Post Conviction Writ of Habeas Corpus throughinhe courts.

I, through my family, paid $3,000.00 to have the aforementioned servicew completed.

I, offer proof of the 'many' excuses I received and the damage I suffered because of the neglected services.(See attached LETTERS FROM THE J.W.O. Campbell Office via MATTHEW R. RAY.)

The FIRST LETTER having no date was received by me on July 8, 2013 and indicates clearly: "I HAVE DONE THE LEGAL RESEARCH NEEDED TO FILE YOUR WRIT, AND WE HAVE EVERYTHING READY TO GO.", "YOUR FAMILY HAS ALREADY PAID [US] $2,300.00, SO ALL [WE] NEED IS THE REMAINING $700.00 AND THEN [WE] WILL BE ABLE TO FILE YOUR WRIT."

The SECOND LETTER "Money had not been paid" so no writ had been filed.

The THIRD LETTER"I am responding to your letter w received today...., Regarding your writ, there have been some DELAYS unfortunately. The FIRST DELAY was we were waiting on another ruling in a different court that we found that raised a few of the issues we are using in your writ, IF another decides favorably on any of the issueds, the it makes your writ STRONGER because [WE] can basically show in your writ what the other court has done. The maine issue was the "STATUE OF LIMITATIONS" issue which [WE] plan to use in your writ'."

"WE ARE UPDATING OUR SOFTWARE TO ENSURE THE WRITS WE MAKE COMPLY WITH THESE NEW RULES, I EXPECT THIS WILL TAKE A FEW MORE WEEKS."
The FOURTH LETTER August 25, 2014 "UNFORTUNATELY, WE'VE HAD SOME UNFORESEEN DELAYS ON YOUR CASE,"

The FIFTH LETTER:" I received a letter FROM YOU that was postmarked September 5, 2014...,":"The latest call [I] got was from Mary Reece. She said that [She'D] GO BY BRIAN LAINE OFFICE AND INQUIRE ABOUT THE RTRANSCRIPTS. becausew it was her understanding he'D "RETURNED THEM TO THE COURT HOUSE.":"THE TRANSCRIPTS CAN COST A LOT OF MONEY TO GET A COPY OF-IT IS NOT INCLUDED IN OUR PRICE. Mary INDICATED SHE THOUGHT IT WAS-HOWEVER IN YOUR CASE WE QUOTED THE PRICE BASED ON THE FACT ANOTHER FIRM ALREADY HAD A FILE INCLUDING TRANSCRIPTS THEY'D SEND US. I'M NOT TRYING TO GET ANY MORE MONEY-IF THERE IS A WAY THE DISTRICT CLERK CAN LET ME TAKE A LOOK AT THE TRANS-CRIPTS they have in the courtyhouse, I can take notes on what I need and be done with it-yes, I would travel from Houston to Hardin County to do this. I'm willing to do this and not charge for it-if that's a way I can get what's needed."

Dispite constant contact with the J.W.O. Campbell Office the SECOND LETTER I received assured me that:"Basically, we have everything ready to file,"

From JULY 8, 2013 TO OCTOBER 24, 2014 although hired to do a service at $3,000.00 "NO" service and NO writ had been filed and to this DATE: FEBRUARY 21, 2017 THERE HAS STILL BEEN NO service or writ filed from this office.

The J.W.O Campbell Office Attorney at Law, through it's sub-contractor MATTHEW R. RAY depended on my AUNT-Mary Reece to "investigate", "find", then retreive needed paperwork that was necessary for the filing of my writ, an act that rested upon the J.W.O. Campbell office to render the services that were required to FILE THE WRIT.

I have suffered being TIME BARRED by the NINTH DISTRICT COURT of Beaumont Texas for filing my Writ TOO LATE direct causation which stems from my being lied to by the J.W.O. Campbell Office about DELAYS that hindered the filing, and my being made to believe the lie that they would eventually file my writ, which "NEVER" happened.

The Ninth District Court of Beaumont blames me for the late filing and "default" of not filing timely.

I, know nothing about the law, which is the reeason I commissioned my family to HIRE the J.W.O. Campbell Office to timely file my writ.

I NOW suffer "NOT" being heard by the court on the merit of my writ , thus collateral suffering of being illegally restrained until a court can and will hear my merits is product of the law office of J.W.O. Campbell promising services that they "NEVER" did deliver.

To-date I have NOT conrtacted or received letter from the J.W.O. Campbell Office and have not been returned any of my money since no service had ever been given.

Even though I have found out that there is no right protected by the U.S. and Texas Constitutions to a adequate or effective assistance of counsel in Post Conviction Process I also feel that I have shown that the J.W.O. Campbell Attorney at Law Office is direct cause of my suffering a default in my legal process and a denial of my right to a process due me as protected by the Fourteenth and Fifth Amendments of the U.S. Constitution where I most certainly addressed the correct Claims within my process, "Ineffective Assistance of Counsel", "Unfair Trial", "Void Indictment", "Illegal Amendment and Tolling" of Indictment", and "Illegal Sentence based on VOID Enhancement Paragraph".

I was tried in the 356 Judicial Court on November 16, 2010 under advise from my HIRED attorney Bryan Laine of Kountze County, Texas, assuring me that I would be walking into court that day and advising the court that I would be requesting dismissal of my 'statute barred' indictments.

Instead my trial attorney failed to investigate a pre-trial hearing that I had no knowledge of and at tha trial he mistakenly "Stipulated" to amendment and tolling paragraph making my non-prosecutable indictments prosecutable, and that day my trial began.

The State of Texas now holds me to default for an untimely writ because the J.W.O. Campbell Law Office failed to prepare, and file as contracted.

I humbly request that this Disciplinary Counsel find and hold the J.W.O. Campbell attorney at law, responsible for my untimely filing and because he failed to timely file and did not prepare and file my writ as contracted, he be ORDERED to at the least return my $3,000.00 for failed service and suffering thereof.

Paid $2,300.00 and holding out for $700.00 the J.W.O. Campbell office made clear claim that "I HAVE DONE ALL THE LEGAL RESEARCH NEEDED TO FILE YOUR WRIT, AND [WE] HAVE EVERYTHING READY TO GO"-July 8, 2013, yet after receiving the full $3,000.00 the excuses/(lies), concerning DELAYS to the filing "never" ceased and the filing "never" has occurred.

A 'breach of contract,' a breach of trust,' a schemed scam,' a calculated crime of fraud is evident where I am promised a service that the J.W.O. Campbell office never intended to provide and in fact did not provide.

I feel I have provided enough evidence as proof to substantiate my claims against this attorney and cause for order to have my $3,000.00 returned by this attorney, therefore I again request the same.

Respectfully Submitted, (3.)

Mr. Vedal A. Davis

CC: VAD. February 21, 2017

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

March 24, 2017

Vedal A. Davis
Inmate #: 1682276
Ramsey Unit
1100 FM 655
Rosharon, TX 77583

Re: 201701425 - Vedal A. Davis -J. W. O. Campbell

Dear Mr. Davis:

The Office of Chief Disciplinary Counsel of the State Bar of Texas has reviewed the above-referenced grievance and determined that the information provided alleges Professional Misconduct or a Disability, or both. The lawyer will be provided a copy of your Complaint, directed to file a response, and provide you a copy of the response within thirty (30) days of receiving notice of the Complaint.

After receipt of the lawyer's written response, the Office of Chief Disciplinary Counsel shall investigate the Complaint to determine whether there is Just Cause to believe that the lawyer has committed Professional Misconduct or suffers from a Disability. During this time it is important that you keep us informed of any changes to your address, telephone number, or employment, and that you cooperate fully with our investigation. You will be notified in writing of further proceedings in this matter.

Please know that the Office of the Chief Disciplinary Counsel maintains confidentiality in the grievance process as directed by the Texas Rules of Disciplinary Procedure.

Sincerely,

Timothy J. Baldwin
Administrative Attorney
TJB/mal

Cc: Mr. J. W. O. Campbell

4801 Woodway Drive, Suite 315-W Houston, Texas 77056
Phone: 713-758-8200 Fax: 713-758-8292

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

May 18, 2017

Vedal A. Davis
Inmate #: 1682276
Ramsey Unit
1100 FM 655
Rosharon, TX 77583

Re: 201701425 - Vedal A. Davis - J. W. O. Campbell

Dear Mr. Davis:

Please be advised that we can no longer pursue your grievance because the attorney has died. This does not mean that your grievance was without merit. It simply means that the State Bar no longer has authority to act. You should consider consulting a private attorney regarding other legal remedies, if any.

Enclosed you will find information regarding the Client Security Fund. The Fund compensates clients of attorneys who have stolen client funds or failed to refund an unearned fee. To learn if you are eligible, call 1-877-953-5535.

Please know that the Office of the Chief Disciplinary Counsel maintains confidentiality in the grievance process as directed by the Texas Rules of Disciplinary Procedure.

Sincerely,

John P. McPoland
Investigator
JPM/mal

Enclosure: Client Security Fund Brochure
Questionnaire

4801 Woodway Drive, Suite 315-W Houston, Texas 77056
Phone: 713-758-8200 Fax: 713-758-8292

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel
Client Security Fund

June 25, 2018

Vedal Abdul Davis #1682276
Ramsey One Unit
1100 FM 655
Rosharon, TX 77583

Re: Client Security Fund Application # 138/10/17

Dear Mr. Davis:

The Client Security Fund Subcommittee has recently completed their review of your application for relief. The Subcommittee has approved a grant to you in the amount of $2,300.00.

Please note that this grant will be paid to Mary Reece and before a check can be issued to her in that amount, it will be necessary for her to execute, and return to this office, the enclosed "Assignment of Applicant Rights and Subrogation Agreement" and Affidavit. Both of these documents must be notarized.

Please return these forms as soon as possible. Our office will contact you if your forms have not been received. Therefore, it is not necessary to call our office regarding receipt of your documents. Your check will be mailed within a few weeks after your Subrogation Agreement has been received. While grants from the Fund are a matter of grace, rather than right, the State Bar of Texas regrets that you have had difficulty with a Texas attorney.

Sincerely,

Claire Mock

Claire Mock
Public Affairs Counsel
cmock@texasbar.com
/enclosures

"REASONS FOR GRANTING PETITION"

APPENDIX-Q

356TH DISTRICT COURT MOTION TO DISMISS
DAVIS' CAUSE NO. 18640 AND REINDICTED UNDER 20784
HARDIN COUNTY, TX-INDICTMENT 20784 AFTER THE STATUTE OF LIMITATIONS

"Appendix Q."

CAUSE #18640

THE STATE OF TEXAS	§	IN THE 356TH
VS.	§	DISTRICT COURT
VEDAL ABDUL DAVIS	§	HARDIN COUNTY, TEXAS

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas by and through her Attorney, and respectfully requests the Court to dismiss the above entitled and numbered criminal action in which the defendant is charged with the offense of AGG ASSAULT W/ DEADLY WEAPON, for the reason:

_____ The evidence is insufficient;
_____ The defendant was convicted in another case;
_____ The complaining witness has requested a dismissal
_____ The case to be refiled;
_____ The defendant is unapprehended;
_____ The defendant is deceased;
_____ The defendant has been granted immunity in light of his/her testimony;
__X__ Other; Reindicted under Cause# 20784

FILED FOR RECORD
10 JUL 15 AM 8:14
GLENN JOHNSON
DISTRICT CLERK
HARDIN COUNTY, TEXAS
BY _____

And for cause would show the Court the following:

WHEREFORE, it is prayed that the above entitled and numbered cause be dismissed.

Respectfully submitted

_____
Prosecutor

ORDER

The foregoing motion having been presented to me on this the 15th day of July, A.D. 2010 and the same having been considered, it is, therefore, ORDERED, ADJUDGED and DECREED that said above entitled and numbered cause be and the same is hereby dismissed.

_____
Judge of the _____
Court of Hardin County, Texas

IMAGED

BRITT Plums
LOLE #
CIVIL

"REASONS FOR GRANTING PETITION"

APPENDIX-R

88TH DISTRICT COURT MOTION TO DISMISS
DAVIS' CAUSE NO. 20786 WHICH WAS AMENDED AND TOLLED
FROM CAUSE NO. 18564 ALL TO COVER UP THE 356TH DISTRICT COURT SCHEME
HARDIN COUNTY, TX-INDICTMENT 20786

"Appendix R."

CAUSE #20786

FILED FOR RECORD
2013 OCT -9 PM 3:36
CLERK
HARDIN COUNTY, TEXAS

THE STATE OF TEXAS	§	IN THE 88TH
VS.	§	DISTRICT COURT
VEDAL DAVIS	§	HARDIN COUNTY, TEXAS

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas by and through her Attorney, and respectfully requests the Court to dismiss the above entitled and numbered criminal action in which the defendant is charged with the offense of **AGGRAVATED ASSAULT WITH A DEADLY WEAPON** for the reason:

____ The evidence is insufficient;
__X__ The defendant was convicted in another case;
____ The complaining witness has requested a dismissal
____ The case to be refiled
____ The defendant is unapprehended;
____ The defendant is deceased;
____ The defendant has been granted immunity in light of his/her testimony;
__X__ Other: CONVICTED IN CAUSE NO. 20784. DEFENDANT RECEIVED 33 YEARS IN TDC

And for cause would show the Court the following:

WHEREFORE, it is prayed that the above entitled and numbered cause be dismissed.

Respectfully submitted

Prosecutor

ORDER

The foregoing motion having been presented to me on this the 11 day of October, A.D. 2013, and the same having been considered, it is, therefore, ORDERED, ADJUDGED and DECREED that said above entitled and numbered cause be and the same is hereby dismissed.

Judge of the
Court of Hardin County, Texas

EARL STOVER