

Cause Nos. 14-CR-2877-83-3 and 15-CR-1476-83-2

EX PARTE	§	IN THE DISTRICT COURT OF
	§	GALVESTON COUNTY, TEXAS
JOSEPH BOURGEOIS	§	56 th JUDICIAL DISTRICT

**STATE'S ANSWER TO APPLICATIONS FOR
POST-CONVICTION WRIT OF HABEAS CORPUS**

The State of Texas, by and through the Criminal District Attorney for Galveston County, Texas, files this answer in response to the habeas application filed by Applicant in each of the above-referenced cases on March 25, 2022.

1. Procedural history

In Cause Number 14-CR-2877, Applicant was charged by indictment with the offenses of intoxication manslaughter (Count I) and manslaughter (Count II). In Cause Number 15-CR-1476, he was charged by indictment with the offenses of intoxication assault (Count I) and aggravated assault (Count II). On January 25, 2016, Applicant entered negotiated pleas of guilty in both cases, pleading guilty to the offenses of intoxication manslaughter (Count I in Cause Number 14-CR-2877) and intoxication assault (Count I in Cause Number 15-CR-1476). On that same date, in each case, the trial court entered a deadly-weapon finding and assessed Applicant's punishment at confinement in the Institutional Division of the Texas

Department of Criminal Justice for a term of 15 years. Count II in each case was dismissed.

On July 8, 2016, Applicant filed separate habeas applications in Cause Numbers 14-CR-2877-83-1 and 15-CR-1476-83-1. On September 21, 2016, the Court of Criminal Appeals, in separate orders, denied each habeas application without written order. *See* Appendix A (notice of denial in Cause No. 14-CR-2877-83-1); Appendix B (notice of denial in Cause No. 15-CR-1476-83-1).

On April 13, 2021, Applicant filed a habeas application in Cause Number 14-CR-2877-83-2. On June 2, 2021, the Court of Criminal Appeals dismissed the application—a subsequent application—pursuant to Texas Code of Criminal Procedure article 11.07, section 4. *See* Appendix C (notice of denial in Cause No. 14-CR-2877-83-2).

On March 25, 2022, Applicant filed the instant habeas applications in Cause Numbers 14-CR-2877-83-3 and 15-CR-1476-83-2. Both applications are subsequent applications.

2. General denial

The State generally denies each and every allegation in Applicant's habeas applications.

3. Applicant's claims are barred by Section 4

Consideration of the claims in the instant habeas applications, both of which are subsequent applications, is barred by Section 4 of Article 11.07. *See* TEX. CODE CRIM. PROC. art. 11.07, § 4(a). The legislative intent underlying Section 4 was to limit a person filing a habeas application under Article 11.07 to “one bite at the apple.” *Ex parte Torres*, 943 S.W.2d 469, 474 (Tex. Crim. App. 1997). Section 4 provides, *inter alia*, as follows:

Sec. 4. (a) 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:

- (1) 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 this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application; or
- (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

TEX. CODE CRIM. PROC. art. 11.07, § 4(a).

Thus, unless a subsequent habeas application establishes the applicability of an exception, Section 4 bars consideration of that application “after final disposition of an initial application challenging the same conviction.” TEX. CODE CRIM. PROC. art. 11.07, § 4(a). A “final disposition” of an initial writ is one that

“entail[s] a disposition relating to the merits of all the claims raised.” *Torres*, 943 S.W.2d at 474.

Here, the Court’s files reflect that, in each of Applicant’s cases, there was a final disposition of the initial habeas application. As was stated above, Applicant filed, on July 8, 2016, separate habeas applications in Cause Numbers 15-CR-1476-83-1 and 14-CR-2877-83-1. On September 21, 2016, the Court of Criminal Appeals, in separate orders, denied each habeas application without written order. *See* Appendix A and Appendix B.

The denial of those initial applications signifies that the Court of Criminal Appeals considered and rejected the merits of the claims asserted therein. *See Torres*, 943 S.W.2d at 472 (“In our writ jurisprudence, a ‘denial’ signifies that we addressed and rejected the merits of a particular claim while a ‘dismissal’ means that we declined to consider the claim for reasons unrelated to the claim’s merits.”).

The instant habeas applications do not contain specific facts sufficient to establish that the current claims could not have been presented previously because the factual or legal basis for the claim was unavailable when the earlier applications were filed. *See* TEX. CODE CRIM. PROC. art. 11.07, § 4(a)(1). Nor do the instant applications contain specific facts sufficient to establish, by a

preponderance of the evidence, that no rational juror could have found the applicant guilty beyond a reasonable doubt. *See id.*, art. 11.07, § 4(a)(2).

In the instant applications, Applicant relies heavily upon *Birchfield*. *See Birchfield v. North Dakota*, 579 U.S. 438, 476, 477 (2016) (holding that “the search incident to arrest doctrine does not justify the warrantless taking of a blood sample” in DWI cases and that “motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense”). For example, Applicant argues, “This was a warrantless blood draw on May 02, 2014[.] The *Birchfield* precedent applies to my case!” Application 14-CR-2877-83-3 at 15; *see* Application 15-CR-1476-83-2 at 9.

Applicant contends that *Birchfield* applies retroactively on collateral review. *See, e.g.*, Application 14-CR-2877-83-3 at 4; Application 15-CR-1476-83-2 at 4. Whether *Birchfield* applies retroactively depends upon the nature of the habeas claim. *See Hanzik v. Davis*, No. 3:16-CV-291, 2017 WL 5178796, at *2 (S.D. Tex. Nov. 7, 2017) (“When the standard set out by the Supreme Court for determining retroactivity is applied, it is clear that the *Birchfield* holding was not made retroactively applicable to drunk-driving cases on collateral review, though it might be retroactively applicable on collateral review to cases in which the petitioners were convicted of violating implied-consent laws.”).

But even if it is assumed, *arguendo*, that, in habeas proceedings, *Birchfield* does apply retroactively to claims of the type set forth in the instant habeas applications, Applicant's claims must still be rejected because the current applications have not established that the "legal basis for the claim," i.e., the *Birchfield* ruling, "was unavailable on the date the applicant filed the previous application[s]." TEX. CODE CRIM. PROC. art. 11.07, § 4(a)(1). The *Birchfield* opinion was issued by the Supreme Court on June 23, 2016. *See Birchfield*, 579 U.S. 438. Applicant's initial habeas applications, in Cause Numbers 15-CR-1476-83-1 and 14-CR-2877-83-1, were filed on a later date, i.e., July 8, 2016.

In other words, any *Birchfield* claims could conceivably have been asserted by Applicant in his initial habeas applications. As a consequence, consideration of any such claims in the instant habeas applications is procedurally barred by article 11.07, section 4.

4. There is no need to expand the record in this case

The record before this Court is sufficient to enable the Court to resolve this matter. Thus, there is no need for the Court to issue any order designating issues of fact or for the Court to convene any fact-finding hearing.

PRAYER

WHEREFORE, the State prays that this Court find that there are no controverted, previously unresolved issues of fact material to the disposition of

Applicant's habeas application and that all of Applicant's claims are barred by Texas Code of Criminal Procedure article 11.07, section 4. The State prays, further, that the Court recommend to the Texas Court of Criminal Appeals that the instant habeas application be dismissed.

Respectfully submitted,

JACK ROADY
Criminal District Attorney

/s/ M. Scott Taliaferro

M. Scott Taliaferro
Assistant Criminal District Attorney
Texas Bar No. 00785584
600 59th Street, Suite 1001
Galveston, Texas 77551
Email: michael.taliaferro@galvestoncountytexas.gov
Phone: (409) 766-2355
Fax: (409) 765-3132

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 73.3, I hereby certify, based on the computer program used to generate this document, that this document contains 1,272 words.

/s/ M. Scott Taliaferro
M. Scott Taliaferro

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of May, 2022, a copy of this Answer to Application for Post-conviction Writ of Habeas Corpus was served on Applicant by e-file service or by sending via certified mail a true and correct copy of this instrument to Applicant at the following address:

Joseph Bourgeois
TDCJ #02048808
Jester III Unit
3 Jester Road
Richmond, TX 77406

/s/ M. Scott Taliaferro

LIST OF APPENDICES

Appendix A Court of Criminal Appeals notice of denial regarding
Cause No. 14-CR-2877-83-1

Appendix B Court of Criminal Appeals notice of denial regarding
Cause No. 15-CR-1476-83-1

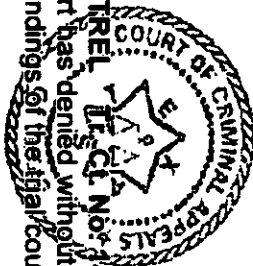
Appendix C Court of Criminal Appeals notice of denial regarding
Cause No. 14-CR-2877-83-2

Proposed Order

Appendix A

Court of Criminal Appeals notice of denial regarding Cause No.14-CR-2877-83-1

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



9/21/2016
BOURGEOIS, JOSEPH MONTELEONE
This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing.

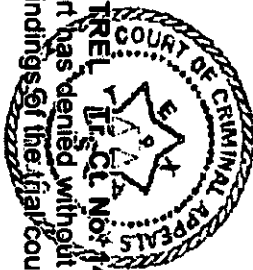
Abel Acosta, Clerk

DISTRICT CLERK GALVESTON COUNTY
JOHN KINARD
600 59TH ST. SUITE 4001
GALVESTON, TX 77551
* DELIVERED VIA E-MAIL *

2016 SEP 23 AM 9:32
GALVESTON COUNTY, TEXAS
DISTRICT CLERK
John B. Kinard

14CR2877-83-1
DCC0FCA
Correspondence from Court of Appeals
1292514

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9/21/2016

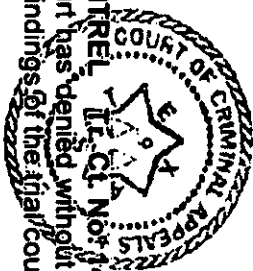
BOURGEOIS, JOSEPH MONTREL, IT'S Ct. No. 14CR2877-83-1 WR-85,655-01

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

Abel Acosta, Clerk

JOSEPH MONTREL BOURGEOIS
HOLIDAY UNIT - TDC # 2048808
295 IH 45 N
HUNTSVILLE, TX 77340-4968

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P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



9/21/2016

BOURGEOIS, JOSEPH MONTELEONE, JR. vs. STATE OF TEXAS **WR-85,655-01**

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

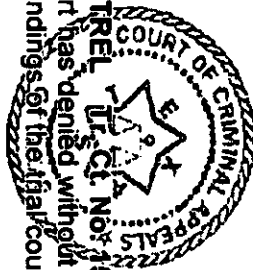
Abel Acosta, Clerk

DISTRICT ATTORNEY GALVESTON COUNTY
JACK ROADY
600 59TH STREET SUITE 1001
GALVESTON, TX 77551
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Appendix B

Court of Criminal Appeals notice of denial regarding Cause No. 15-CR-1476-83-1

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
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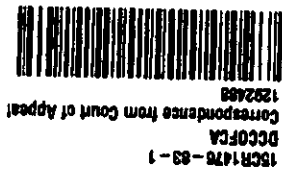


9/21/2016
BOURGEOIS, JOSEPH MONTELEONE, JR. vs. STATE OF TEXAS
This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing.

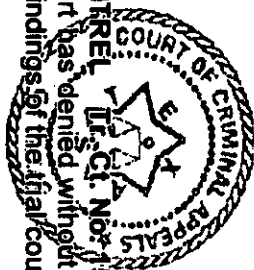
Abel Acosta, Clerk

DISTRICT CLERK GALVESTON COUNTY
JOHN KINARD
600 59TH ST. SUITE 4001
GALVESTON, TX 77551
* DELIVERED VIA E-MAIL *

2016 SEP 23 AM 9:32
DISTRICT CLERK
GALVESTON COUNTY, TEXAS



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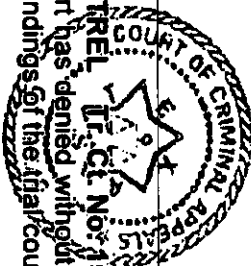


9/21/2016
BOURGEOIS, JOSEPH MONTREL, JR. vs. STATE OF TEXAS, No. 15CR1476-83-1 WR-85,655-02
This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing.

Abel Acosta, Clerk

JOSEPH MONTREL BOURGEOIS
HOLIDAY UNIT - TDC # 2048808
295 IH 45 N
HUNTSVILLE, TX 77340-4968

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P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



9/21/2016

BOURGEOIS, JOSEPH MONTELEONE, JR. Ct. No. 15CCR1476-83-1 WR-85,655-02

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

Abel Acosta, Clerk

DISTRICT ATTORNEY GALVESTON COUNTY
JACK ROADY
600 59TH STREET SUITE 1001
GALVESTON, TX 77551
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Appendix C

Court of Criminal Appeals notice of denial regarding Cause No. 14-CR-2877-83-2

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

6/2/2021

BOURGEOIS, JOSEPH MONTREL Tr. Ct. No. **14-CR-2877-83-2 WR-85,655-03**

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

DISTRICT CLERK GALVESTON COUNTY

JOHN KINARD

600 59TH ST. SUITE 4001

GALVESTON, TX 77551

* DELIVERED VIA E-MAIL *

14-CR-2877-83-2
DCC06CA
Correspondence from Court of Appeals
22037716

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P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/2/2021

BOURGEOIS, JOSEPH MONTREL T. Ct. No. 14-CR-2877-83-2 WR-85,655-03

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

JOSEPH MONTREL BOURGEOIS
JESTER III UNIT - TDC # 2048808
3 JESTER ROAD
RICHMOND, TX 77406

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

6/2/2021

BOURGEOIS, JOSEPH MONTREL Tr. Ct. No. 14-CR-2877-83-2 WR-85,655-03

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

DISTRICT ATTORNEY GALVESTON COUNTY

JACK ROADY

600 59TH STREET SUITE 1001

GALVESTON, TX 77551

* DELIVERED VIA E-MAIL *

Cause Nos. 14-CR-2877-83-3 and 15-CR-1476-83-2

EX PARTE

§ IN THE DISTRICT COURT OF

§ GALVESTON COUNTY, TEXAS

JOSEPH BOURGEOIS

§ 56th JUDICIAL DISTRICT

**FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDATION,
AND ORDER TO TRANSMIT HABEAS CORPUS RECORD
(POST CONVICTION APPLICATION)**

ON THIS _____ day of _____, _____, came on to be considered the application for writ of habeas corpus filed by Applicant in each of the above causes. The Court makes the following findings of fact and conclusions of law:

1. In each of the above-referenced cases, there are no controverted, previously unresolved issues of fact that are material to the disposition of Applicant's applications for writ of habeas corpus.
2. Each of the instant habeas applications is a subsequent application.
3. The instant habeas applications do not contain specific facts sufficient to establish that the current claims could not have been presented previously because the factual or legal basis for the claim was unavailable when the earlier applications were filed. *See* TEX. CODE CRIM. PROC. art. 11.07, § 4(a)(1).
4. The instant applications do not contain specific facts sufficient to establish, by a preponderance of the evidence, that no rational juror could have found the applicant guilty beyond a reasonable doubt. *See id.*, art. 11.07, § 4(a)(2).
5. All of the claims asserted in each of the instant habeas applications are barred by Texas Code of Criminal Procedure article 11.07, section 4.

On the basis of the foregoing finding and conclusions, this Court

recommends to the Texas Court of Criminal Appeals that Applicant's habeas application be **DISMISSED**.

The Court hereby **ORDERS** that the District Clerk of Galveston County prepare and transmit the record herein to the Texas Court of Criminal Appeals.

JUDGE PRESIDING

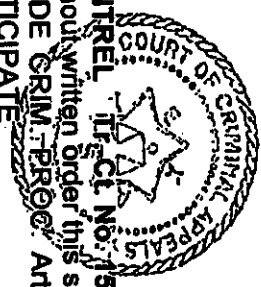
EXHIBIT
2

JOHN D. KINARD
CLERK DISTRICT COURT

JUN 09 2022

BY GALESTON COUNTY, TEXAS
DEPUTY

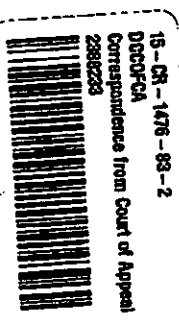
OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



6/8/2022
BOURGEOIS, JOSEPH MONTREL
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). JUDGE SLAUGHTER DID NOT PARTICIPATE

Deana Williamson, Clerk

DISTRICT CLERK GALVESTON COUNTY
JOHN KINARD
600 59TH ST. SUITE 4001
GALVESTON, TX 77551
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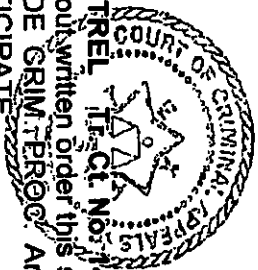
JOHN D. KINARD
CLERK DISTRICT COURT
FILED

JUN 09 2022

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P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

BY GALVESTON COUNTY, TEXAS
DEPUTY



6/8/2022

BOURGEOIS, JOSEPH MONTREL, Petitioner, vs. The State of Texas, Respondent, Case No. 14-CR-2877-83-3 WR-85,655-04

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). JUDGE SLAUGHTER DID NOT PARTICIPATE

Deana Williamson, Clerk

JOSEPH MONTREL BOURGEOIS
JESTER III UNIT - TDC # 2048808
3 JESTER ROAD
RICHMOND, TX 77406

