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

PRESORTED FIRST-CLASS MAIL

US POSTAGE PITNEY BOWES
ZIP 78701 $ 000.34[8]
02 4W
0000372130 JUL 18 2022

6/29/2022

YOUNG, JUSTIN TYRONE Tr. Ct. No. 16-24290-B WR-93,385-02

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

B-39

JUSTIN TYRONE YOUNG
JESTER III UNIT - TDC # 2057067
3 JESTER ROAD
RICHMOND, TX 77406

28 FMEZNAB 77406

Cause No. 16-24290-B

Ex Parte	§	**In the 252nd District**
	§	
Justin Tyrone Young	§	**Court of**
	§	
Applicant	§	**Jefferson County, Texas**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas by and through its Criminal District Attorney for Jefferson County, Texas and respectfully makes answer as follows:

I.

The State admits that Applicant was convicted in this court in the above referenced case. The State denies all other allegations in this application.

II.

Grounds One and Two:

In Grounds One and Two, Applicant is complaining about a warrantless blood draw. But, Applicant entered a plea, without the benefit of trial. The evidence admitted against Applicant in support of his conviction consisted not of any blood evidence, but of his plea along with the supporting judicial admission found in the "Stipulations, Waivers & Judicial Admission"

documentation. The Court of Appeals affirmed Applicant's conviction holding, among other things, that the trial court did not err when it denied applicant's suppression motion following an extensive evidentiary hearing conducted prior to applicant's guilty plea. *See Young v. State*, No. 09-16-00074-CR, 2016 WL 4499075 (Tex. App.—Beaumont Aug. 24, 2016, pet. ref'd)(mem. op., not designated for publication); (*see also* WRIT NO. 16-24290-A, Findings of Fact, Conclusions of Law, and Recommendation). This centered upon suppression of evidence used in the prosecution of Applicant. The State notes that the time for Applicant to challenge the admissibility, or suppression thereof, of any blood test results in any capacity was during a pre-trial motion to suppress or at the time of trial. Even a Constitutional claim is forfeited if the applicant had the opportunity to raise the issue on appeal. *See Ex parte Townsend*, 137 S.W.3d 79, 81 (Tex. Crim. App. 2004); *Ex parte Banks*, 769 S.W.2d 539 (Tex. Crim. App. 1989). Relief should be denied.

Grounds Three, Four, Five, and Six:

In these Grounds, Applicant appears to essentially be complaining of ineffective assistance of trial counsel, and appellate counsel, for failure to challenge the enhancement paragraph of the waiver of indictment that Applicant agreed to. Applicant was charged with intoxication manslaughter

under Tex. Penal Code § 49.08, which is a second-degree felony, not a State Jail Felony. The punishment was properly enhanced because of a conviction of a prior robbery which was a second-degree felony, not a State Jail Felony. The enhancement was proper under Tex. Penal Code § 12.42(b). Because the enhancement was proper under Texas law, Applicant's trial attorney was not ineffective for failing to challenge the enhancement and resulting punishment range, or in advising Applicant about the implications thereof. The same can be said for Appellate counsel. Applicant, in a previous application, made claims of ineffective assistance of counsel focused upon admission of hospital blood test results. There appears to be no legal reasons why his current ineffective assistance claims were not, or could not, have been presented in his previous writ filed under 11.07. Tex. Code Crim. Proc. Ann. art. 11.07 Sec. 4(a) and 4(a)(1) dictate that a court may not consider the merits of or grant relief based on subsequent applications unless the application contains sufficient facts establishing that the current claims and issues have not and could not have been presented previously in an original application or in a previously considered application filed under 11.07 because the factual or legal basis for the claim was unavailable on the date he filed the previous application. Relief should be denied.

Certificate of Service

A copy of the above and foregoing Response to Applications for Writ of Habeas Corpus has been served by U.S. Mail, postage prepaid, on this the 20th day of June, 2022, to the Applicant at the following address:

Justin Tyrone Young
TDCJ #02057067
Beauford H. Jester III Unit
3 Jester Road
Richmond, Texas 77406

/s/ Wayln G. Thompson

Wayln G. Thompson, Assistant
Criminal District Attorney
Jefferson County, Texas

ATTACHMENTS:

- Waiver of Indictment (Attachment A)
- Written Plea Admonishments (Attachment B)
- Agreed Punishment Recommendation (Attachment C)
- Memorandum Opinion on Appeal (No. 09-16-00074-CR) (Attachment D)

Prayer

WHEREFORE, the State prays that the Court would deny relief.

Respectfully Submitted,

Bob Wortham
Criminal District Attorney
Jefferson County, Texas

/s/ Wayln G. Thompson

Wayln G. Thompson, Assistant
Criminal District Attorney
Jefferson County, Texas
Texas Bar No. 19959725
Email: thompson@co.jefferson.tx.us
1085 Pearl Street, Suite 300
Beaumont, Texas 77701
(409) 835-8550

IN THE CRIMINAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS

EX PARTE	§	
	§	**WRIT NO. 16-24290-A**
JUSTIN TYRONE YOUNG	§	

AFFIDAVIT

STATE OF TEXAS

COUNTY OF HARRIS

On this day personally appeared, George J. Parnham, who under oath swore as follows:

"My name is George J. Parnham. I am a licensed attorney with the State Bar of Texas, as well as the State Bar of New York. In Texas, I am Board Certified in Criminal Law by the Texas Board of Legal Specialization. I have been practicing law for 51 years in the area of criminal defense. I have tried several hundred cases in my career in counties across the state of Texas in both state and federal courts, as well as a multitude of other states with the assistance of local counsels.

I was the attorney of record for the Defendant in the cause entitled State of Texas v. Justin Tyrone Young, Cause Nos. 14-20609 and 14-19428, in the 252nd District Court of Jefferson County, Texas. In answer to the Order for Affidavit from Trial Counsel, I state the following:

Issue 1:

Applicant claims that I rendered ineffective assistance in my handling of the Motion to Suppress by failing to use the medical records to show that the hospital staff acted in conjunction with law enforcement regarding the blood sample. First, although I was not successful in proving that issue to the trial court, it was my argument. All of the records referenced in the writ were made available to the court, and it is my belief the court reviewed those records in full before making its determination.

Second, I do not understand how this issue would entitle Applicant to relief. Regardless of whether I rendered deficient performance, to be entitled to relief, a

habeas applicant must show prejudice. I do not believe this applicant can, as, by his own admission, the blood test results were suppressed, if for other reasons. As such, I do not see how the Applicant was prejudiced by my handling of the medical records as they relate to the complained of blood draw.

Issue 2:

Applicant further claims that I rendered ineffective assistance by failing to utilize the medical records to prove that the hospital staff acted in conjunction with law enforcement regarding the urine sample. What the Applicant asserts in his affidavit, the affidavit of Nurse Lee, and the medical records, are the only thing that this Court may review in deciding the issue. However, Applicant fails to even acknowledge the testimony of Dr. Kavouspour.

Dr. Kavouspour testified that he routinely ordered urinalyses in many circumstances and personally ordered such a procedure in this case. Further, he clearly stated that his decision for doing so had no bearing on Applicant's stated drug use, and that he ordered such prior to learning of that drug use. I do not see how the urine sample was not obtained solely for the purposes of medical treatment given this testimony. It is my belief that Applicant is attempting to mislead the Court about the state of the evidence on this issue, and that it is completely without merit.

Issue 3:

Applicant finally claims that I rendered ineffective assistance by failing to hire an expert, and/or present evidence regarding Versed IM. The problem with Applicant's position is that intoxication, whether voluntary or otherwise, does not render a statement involuntary per se. A defendant seeking to challenge a statement on that basis must show that the intoxication prevented an informed and independent decision to make the statement. Here, I determined that such an effort would likely be fruitless as it was impossible to determine which, if either, substance prevented such a decision. Further, had I tried the suppression issue to a jury, it would have required me to offer evidence of Applicant's PCP use, which likely would have proven the State's case for them.

Additionally, it is my belief that Applicant is again trying to mislead this Court as to the state of the evidence. Dr. Kavouspour testified that Applicant admitted to using PCP to him, the EMS tech's notes indicated that Applicant may have admitted it to him, and finally, there was the third admission made to the

nurse that was overheard by law enforcement. Although I specifically challenged the third admission in the hearing, there really was never any way to keep the other two admissions out. The State could have called those individuals to testify at trial as they were statements against interest, and there is no medical privilege that would prevent the individuals from testifying.

Moreover, Officer Little testified that Applicant smelled of PCP at the scene. Even had we been successful in suppressing the actual results of the urinalysis, it is unlikely that Applicant would have been acquitted given his admissions and the officer's observations. This is specifically why I advised Applicant to accept the plea bargain as, due to the death that resulted from the crash and the enhancement paragraph in the indictment, it was my belief that a jury was likely to give Applicant a life sentence as there was still plenty of evidence sufficient to support the State's theory of intoxication being the cause."

Respectfully submitted,

GEORGE J. PARNHAM
TBA #15532000

440 Louisiana, Suite 200
Houston, TX 77002
(713) 224-3967
(713) 224-2815 (FAX)
georgeparnham@aol.com

SWORN TO AND SUBSCRIBED before me on this the 15 day of June, 2021, to which witness my hand and seal of office.

ELIZABETH MARIE RODRIGUEZ
Notary ID #130376715
My Commission Expires
September 21, 2023

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

IN THE CRIMINAL DISTRICT COURT

OF JEFFERSON COUNTY, TEXAS

EX PARTE	*	
	*	**WRIT NO. 16-24290-A**
JUSTIN TYRONE YOUNG	*	

APPLICANTS RESPONSE TO AFFIDAVIT OF GEORGE J. PARNHAM

COMES NOW, the Applicant, JUSTIN TYRONE YOUNG, by and through his attorney of record, JAMES P. SPENCER II, and files this response to the Affidavit of George J. Parnam. The Applicant would show/point out the following:

I.

The Affidavit of George J. Parnam (hereinafter referred to as "attorney") is non-responsive to the SPECIFIC issues of "ineffective assistance of counsel" complained of in the Applicant's Writ. The Applicant not only complains of "ineffective assistance of counsel" in his Writ but points out the specific instances of conduct of the attorney. The attorney's affidavit generally states that he filed a motion to suppress but was ultimately not successful in his motion to suppress.

The Applicant's complaint is that the attorney did not have the requisite basis of knowledge to interpret the medical records in his case. Further, that the attorney failed to retain "expert" help to PROPERLY interpret the medical records. The equivalent argument, of the Applicant's writ, would be that of an EXCLUSIVELY civil attorney taking a capital criminal case (without the requisite knowledge of criminal law and procedure) and complaining that he went through the "motions that he was aware of" but lost the case. In the Applicant's case the attorney failed to see that there was not two but only one blood sample taken (the attorney was actually the CREATOR of that confusion), failed to understand the authorization procedures

REQUIRED by the emergency room in obtaining a urine sample with an INVASIVE procedure and failed to understand the "hypnotic" effects of versed IM go beyond simple intoxication. Had the attorney understood these things he would have been more effective in cross-examining the States witnesses and would have realized that the States witnesses were speculating answers rather than referring to the medical records (as the answers to many of the questions posed to the witnesses were contained in the records and DIFFERENT than the responses of the witnesses). In many cases, a third-party witness is "assumed" to be impartial but in this case the actions of the hospital staff VIOLATED existing State and Federal Laws (i.e. HIPPA) and thus gave them a reason to be evasive during cross-examination. The Attorney wholly fails to respond to these specific complaints of the Applicant.

II.

As to Point One in the attorney's response to Applicant's Writ, the applicant is arguing collusion between the Hospital staff and law enforcement. The suppressed blood sample was used as an example of this collusion (reference the arguments in the Writ). However, the attorney fails to explain WHY he CREATED the idea of a second blood sample by his statements when the States witness (i.e. Nurse) testified that there was ONLY ONE BLOOD SAMPLE TAKEN. This demonstrates the attorney's failure to understand the medical records and the fact that the medical records ONLY reference ONE sample. The attorney references the testimony of Dr. Kavouspour in his point two, yet he failed to bring out in court that when the Doctor was asked about the blood sample that was to be sent to the lab – his response was that the sample was not tested because it may have gone bad. This was in DIRECT contradiction to the medical records (basically a subterfuge to protect the hospital from legal ramifications) AND the nurse's testimony which stated that only ONE sample was taken and it WAS GIVEN TO THE

OFFICERS. Thus, the attorney fails to respond to these facts (actually further confuses the issue – i.e. number of blood samples taken) contained in the records and why he did not use them to show the hospital staff were in violation of State and Federal law as well as acting in collusion with law enforcement. Showing this collusion in conjunction with the evidence contained in the medical records would have resulted in suppression of all samples taken from the Applicant by the hospital. The attorney failed to understand the information contained in the medical records and thus was ineffective in his use of the records to demonstrate the above at trial. The attorney actually HELPED the States' case by suggesting a second sample of blood existed when it did not; this was due to his inability to read and understand the medical records.

III.

The attorney is non-responsive in his affidavit as to the issue of proper medical procedures. It is true that Dr Kavouspour routinely ordered urinalysis in many circumstances BUT, as shown by the affidavit of Nurse Lee, the Applicant's urine sample was taken by an INVASIVE procedure that was NOT properly authorized by the doctor. At NO POINT in the record, does any State witness testify that the urine sample was taken using the proper hospital procedures. In a non-invasive urine sample the Applicant can refuse to give a sample but in an invasive procedure the Applicant cannot refuse. The procedure used was invasive and required a SECOND written authorization by the physician. This authorization was not in the medical records therefore the sample was taken improperly and WITHOUT the NECESSARY doctor's authorization. The attorney fails to respond to this issue despite conceding that the Court must rely on Nurse Lee's affidavit. The attorney's assertion that the Applicant is "attempting to mislead the Court about the state of the evidence" (without submitting evidence of his own supporting this assertion) is completely without merit and a desperate attempt to disguise his own

"ineffective assistance" at trial in failing to bring out this departure from proper medical procedure by the hospital staff in obtaining the urine sample. None of the State's witnesses could "recall" the urine sample procedure and thus none of them testified that the hospital procedures were properly followed (i.e basically they testified that it was REQUESTED but not that it was AUTHORIZED AS PERFORMED). The Applicant's affidavit indicates he refused the urine sample procedure, thus the nurse resorted to an invasive involuntarily procedure which was NOT authorized by the doctor. This procedural deficit by the hospital staff should have resulted in the suppression of the urine sample and most probably would have but for the "ineffective assistance of the attorney" in his failure to have an expert review the hospital records/procedures and provide this information to the attorney for use at the hearing. Again, the attorney fails to respond to this specific deficit performance in his affidavit.

IV

The attorney fails, in his affidavit, to reference the Affidavit of EMS Boles which describes the "hypnotic" effects of Versed IM. These effects on patients can include "simply agreeing with questions" asked of them. The Versed IM does not to be used in conjunction with PCP (or any other drug) to have this effect of patients; as alleged in the attorney's affidavit. See affidavit of EMS Boles. The attorney failed to use this argument in front of a Judge at a suppression hearing NOT a jury. Since this was a case where the Applicant was accused of actions while under the influence of drugs, it ONLY makes sense to understand the types and effects of all drugs administered to the Applicant on the night of the incident. The attorney NEVER made any attempt to understand the effects of the drugs administered to the Applicant prior to his statements made to hospital staff and law enforcement. The US Supreme Court determined in Townsend v. Sain, 372 U.S. 293 (1963) that medications which reduce the

voluntariness of statements make the statements inadmissible in Court. The attorney did not inquire into the effects of Versed IM and thus did not determine that it was a "hypnotic" which could reduce the voluntariness of statements made by recipients. Again, the attorney makes the argument that the Applicant was simply "intoxicated" without differentiating it from being under the influence of a "hypnotic" which reduces the voluntariness of the statements the Applicant allegedly made. Additionally, the attorney references THREE instances of the Applicant making statements while the record shows that these three instances were actually ONE instance overheard by two other persons. It would not prejudice the Applicant's rights in a jury trial to challenge the voluntariness of his alleged statements (based on involuntariness of statements created by use of Versed IM) in a suppression hearing prior to any trial. There was no testimony at the trial that the drugs administered by EMS would NOT effect voluntariness of statements; however, the absence of the EMS workers at the trial, for their testimony, was "interesting." Based on the case law cited and affidavit of EMS Boles, the attorney rendered "ineffective assistance" by not moving to suppress the Applicant's statements based on his being under the influence of a "hypnotic" as opposed to simple intoxication. Again, the attorney's affidavit wholly fails to address the information, describing Versed IM as a "hypnotic", in the affidavit of EMS BOLES.

V.

WHEREFORE, PREMISES CONSIDERED, the Attorney's affidavit is completely non-responsive to the specific allegations of "ineffective assistance" contained in the Applicant's Writ. This non-responsiveness renders his attempt at explanation of his "ineffective assistance" at trial similarly ineffective in controverting the allegations contained in the Applicant's Writ.

For the above reasons the Applicant prays that all relief prayed for by Respondent be denied

and that Applicant be granted all relief requested in this matter.

Applicant prays for general relief, and for such other and further relief in connection therewith that is proper.

. Respectfully submitted,

Law Offices of James P. Spencer II
5023 FM 1632
Woodville, Tx 75979
Tel: (409) 549-6400
Fax: (409) 837-2378

BY: */s/ James P Spencer II*
James P. Spencer II
State Bar No. 17365980
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on _____, 2021, a true and correct copy of the above and foregoing document was served on the Hardin County District Attorney's Office by hand delivery.

/s/ James P Spencer II

James P. Spencer II

CSINIB02/CINIB02 TEXAS DEPARTMENT OF CRIMINAL JUSTICE 08/29/22
AIE9/JR00031 IN-FORMA-PAUPERIS DATA 08:21:19
TDCJ#: 02057067 SID#: 05905313 LOCATION: JESTER III INDIGENT DTE:
NAME: YOUNG,JUSTIN TYRONE BEGINNING PERIOD: 02/01/22
PREVIOUS TDCJ NUMBERS: 01119498 01186804 01483520 01854211
CURRENT BAL: 74.97 TOT HOLD AMT: 0.00 3MTH TOT DEP: 630.00
6MTH DEP: 1,478.00 6MTH AVG BAL: 88.06 6MTH AVG DEP: 246.33

MONTH	HIGHEST BALANCE	TOTAL DEPOSITS	MONTH	HIGHEST BALANCE	TOTAL DEPOSITS
07/22	200.32	390.00	04/22	281.00	250.00
06/22	100.00	190.00	03/22	235.70	333.00
05/22	174.80	50.00	02/22	200.00	265.00

STATE OF TEXAS COUNTY OF Fort Bend
ON THIS THE 29th DAY OF August 22, I CERTIFY THAT THIS DOCUMENT IS A TRUE, COMPLETE, AND UNALTERED COPY MADE BY ME OF INFORMATION CONTAINED IN THE COMPUTER DATABASE REGARDING THE OFFENDER'S ACCOUNT. NP SIG: _____
PF1-HELP PF3-END ENTER NEXT TDCJ NUMBER: _____ OR SID NUMBER: _____

NOTARY PUBLIC STATE OF TEXAS
Roxann L. Jones
ID# 13224057-3
Notary Public, State of Texas
My Commission Expires
10/30/2023
Notary Without Bond