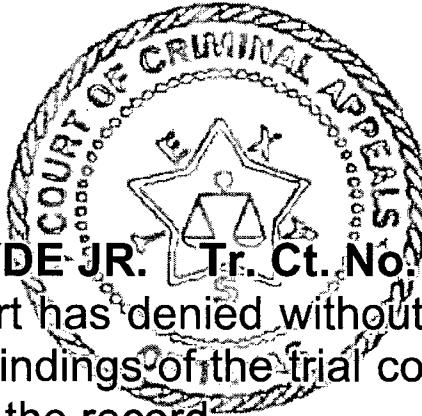


OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS **FILE COPY**
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



8/24/2022

CULBERSON, WILLIAM CLYDE JR. Tr. Ct. No. 10-113 A WR-87,284-02

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 and on the Court's independent review of the record.

Deana Williamson, Clerk

DISTRICT CLERK COLORADO COUNTY
COUNTY COURTHOUSE
COLUMBUS, TX 78934
* DELIVERED VIA E-MAIL *

CLERK'S RECORD

VOLUME 1 OF 1

**In the 2nd 25th District Court
of Colorado County, Texas
Honorable Jessica R. Crawford, Judge Presiding**

William Clyde Culberson, Jr., Plaintiff

Vs.

The State of Texas, Defendant

Appealed to the Court of Criminal Appeals of Texas of Austin, Texas

Attorney for Appellant (s): Pro Se

Name William Clyde Culberson, Jr. #01713749

Address: Gib Lewis Unit , 777 FM 3497, Woodville, Texas 75990

Telephone No. _____

Fax No. _____

SBOT No. _____

Delivered to the Court of Criminal Appeals, at Austin, Texas
on the 29th day of June, 2022.

Linda Holman
Clerk, 2nd 25th District Court
Colorado County, Texas

By: _____

Deputy



INDEX

Clerk's Transcript Cover Sheet.....	1
Clerk's Record.....	2
Index.....	3
Application for a Writ of Habeas Corpus.....	4
Memorandum of Law to Support His 11.07 Post Conviction Habeas Corpus.....	23
Docket Sheet – Writ.....	55
Letter to Judge Jessica R. Crawford.....	56
Letter to Jay Johannes, County Attorney.....	57
Certified Copy of Indictment.....	58
Certified Copy of Judgment of Conviction by Jury.....	59
Trial Court's Certification of Defendant's Right of Appeal.....	61
Notice of Victim's Outcry Statement.....	62
State's Motion to Amend the Indictment.....	63
State's Response to Defendant's Request for Notice of State's Intention to Use of Evidence of Extraneous Offenses at Trial.....	65
Motion for Discovery of Exculpatory and Mitigating Evidence.....	67
Order -Motion for Discovery of Exculpatory and Mitigating Evidence not signed.....	69
Motion to Prevent State from Reading Or Alluding to Nonjurisdictional Enhancement Count.....	70
Order Motion to Prevent State from Reading or Alluding to Nonjurisdictional Enhancement Count not sign	72
Defendant's Request for Notice of State's Intention to Use Evidence of Extraneous Offenses.....	73
Motion for Discovery of the Arrest and Convictions Records of State's Witnesses.....	76
Order Motion for Discovery of the Arrest and Conviction Records of State's Witnesses not signed.....	80
Motion for Production of Writings and Statements and for Recess.....	81
Order Motion for Production of Writings and Statements and for Recess..not signed.....	83
Motion to Arraign Defendant Outside the Presence of the Jury.....	84
Order Motion to Arraign Defendant Outside of the Presence of the Jury not signed.....	86
Motion to Limit State's Jury Argument.....	87
Order to Limit State's Jury Argument not signed.....	96
Defendant's Election as to Punishment.....	98
State's Motion/Order in Limine signed.....	99
Jury Instructions.....	101
Notice of Appeal.....	107
Appeal Card.....	108
Memorandum Opinion.....	109
Mandate.....	117
Judgment.....	119
Reporter's Record Volume 3.....	120
State's Answer in Opposition to Applicant's Application for Writ of Habeas Corpus.....	206
Findings of Fact and Conclusions of Law.....	247
Clerk's Certification.....	252

EX PARTE § **IN THE DISTRICT COURT OF**
WILLIAM C. CULBERSON, JR. § **COLORADO COUNTY, TEXAS**
§ **2ND 25TH JUDICIAL DISTRICT**

Having considered the application for writ of habeas corpus, the State's answer, and the Court's file in the above-numbered cause, the Court makes the following Findings of Fact and Conclusions of Law:

1. On May 31, 2022, Applicant filed his first application for writ of habeas corpus pursuant to Article 11.07 of the Code of Criminal Procedure in the above-numbered cause asserting the following grounds for relief:
 - a. The Applicant was denied the right to a fair trial because the State failed to disclose Brady material in the form of medical records prior to trial [App. at 6, re-stated];
 - b. Trial counsel was ineffective for not raising a Brady objection to the medical records introduced as State's Exhibit #1 [App at 8, re-stated];

- c. Trial counsel rendered ineffective assistance of counsel when he failed to seek a mistrial after the introduction of the medical records identified as State's Exhibit #1 [App. at 10, re-stated]; and
 - d. Appellate counsel rendered ineffective assistance of counsel when he failed to allege a violation of Applicant's right to confront and cross examine witnesses after the introduction of the medical records as State's Exhibit #1 [App. at 12, re-stated].
2. Trial counsel, John Julian Moore, has frequently practiced law before me in the 2nd 25th Judicial District Court and I find him to be a knowledgeable and credible attorney.
 3. On May 10, 2011, Applicant was convicted of Indecency with a Child by Sexual Contact and sentenced to mandatory life imprisonment based upon the Applicant's previous conviction for Indecency with a Child under Penal Code §21.11 in Cause Number 95R-095 in the 155th Judicial District Court of Fayette County, Texas, on April 23, 2003.
 4. During the trial of Cause Number CR10-113 fourteen pages of records from Colorado-Fayette Medical Center were admitted as State's Exhibit #1.
 5. Trial counsel was provided with 10 of the 14 pages of the records admitted as State's Exhibit #1 prior to trial.

6. Trial counsel was not provided four pages of State's Exhibit #1. The missing pages are as follows:
 - a. A two-page document identified as "Out-Patient Case Summary";
 - b. A photocopy of Officer Hilley's business card; and
 - c. A medical release form executed by the child-victim's mother.
7. The two-page document identified as "Out-Patient Case Summary" consists of coding and billing information. The document does not contain treatment information or diagnostic information.
8. The photocopy of Officer Hilley's business card simply contains the officer's contact information.
9. The medical release merely authorizes Colorado-Fayette Medical Center to release the child-victim's medical records to the Weimar, Texas Police Department.
10. The statements made by the child victim and her mother documented in State's Exhibit #1 to medical personnel were for the purpose to diagnosis and treatment.

CONCLUSIONS OF LAW

1. There are no material, previously unresolved issues of fact which are material to the legality of Applicant's conviction and sentence and there being ample

evidence in the record for the Court to rule on the relief sought, an evidentiary hearing is not required.

2. The four pages of State's Exhibit #1 not provided to the Applicant prior to trial are not *Brady* material.
 - a. The two-page document described as "Out-Patient Case Summary" does not contain information that is favorable to the Applicant. *Pena v, State*, 353 S.W. 2nd 797 (Tex. Crim. App. 2011).
 - b. Considering the Application, evidence and affidavits of counsel the two-page document described as "Out-Patient Case Summary" is not reasonably probable that the outcome of the trial would have been different if the document had been disclosed before trial. *Pena v, State*, 353 S.W. 2nd 797 (Tex. Crim. App. 2011).
 - c. The photocopy of Officer Hilley's business card is not favorable or material.
 - d. The medical release is not favorable or material.

RECOMMENDATION

It is the recommendation of this Court that the relief requested by the Applicant be denied.

ORDER

The clerk of this court is ordered to certify (1) a copy of the indictment, judgment and sentence in the above-numbered cause; (2) a copy Volume 3 of the Reporters Record; (3) a copy of all filings relating to this application for Writ of Habeas Corpus, including the State's answer and all supplements and amendments thereto; (4) a copy of this Finding of Fact and Conclusions of Law, Recommendation and Order, and send them to the Texas Court of Criminal Appeals; and any medical records shall be marked as containing sensitive material; and to send a copy of this Order to Applicant and the State.

SIGNED ON THIS THE 17 day of June 2022.



Judge Presiding
2nd 25th District Court
Colorado County, Texas

FILED FOR RECORD
COLORADO COUNTY, TX.

2022 JUN 17 A 11:28

LINDA HOLMAN
COLORADO CO. DISTRICT CLERK

**CLERK'S CERTIFICATE OF NOTIFICATION OF APPLICATION OF HABEAS
CORPUS**

CAUSE NO#10-113 A

WILLIAM CLYDE CULBERSON, JR.	 	IN THE 2ND 25TH DISTRICT COURT
VS.	 	OF
STATE OF TEXAS	 	COLORADO COUNTY, TEXAS

This is to certify that the above numbered and entitled post conviction application for for the Writ of Habeas Corpus was filed in the court on the 31st of May, 2022; and that a copy of said petition was served upon the District Attorney on the 2nd day of June, 2022.

The Trial Court made findings of fact and conclusion of law on the Writ of Habeas Corpus.

SO CERTIFIED this the 29th day of June , 2022.

Linda Holman
District Clerk
Colorado County, Texas

By *Melissa Harza* Deputy

