No. _____

In The

SUPREME COURT OF THE UNITED STATES

*

SAMUEL ADKINS,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

*

On Petition For A Writ Of Certiorari
To The Texas Court Of Criminal Appeals

*

APPENDIX IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

*

Samuel Adkins
Pro Se Petitioner
TDCJ #1927447
French M. Robertson Unit
12071 FM 3522
Abilene, Texas 79601

INDEX OF APPENDICES

APPENDIX 1

APPENDIX 2

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

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ADKINS, SAMUEL **Tr. Ct. No. D-1-DC-13-904105-A** **WR-94,088-02**

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

4F-45B

SAMUEL ADKINS
ROBERTSON UNIT - TDC # 1927447
12071 FM 3522
ABILENE, TX 79601

KMEWMAB 79601

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No. D-1-DC-13-904105-A

EX PARTE	§	**IN THE DISTRICT COURT**
	§	
	§	**OF TRAVIS COUNTY, TEXAS**
	§	
SAMUEL ADKINS	§	**427TH JUDICIAL DISTRICT**

STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now comes the State, by and through its Assistant District Attorney for Travis County, Texas, in the above numbered and entitled cause, and respectfully proposes the following Findings of Fact and Conclusions of Law on Applicant Samuel Adkins's application for writ of habeas corpus under Texas Code of Criminal Procedure Article 11.07.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the documents on file with the Clerk of the Court, the record of Applicant's trial, the pleadings of both parties, and the affidavit submitted by trial counsel, the Court hereby enters the following findings of fact, conclusions of law, recommendation, and Order:

PROCEDURAL FACTS

1. On April 20, 2022, Applicant filed an Application for a Writ of Habeas Corpus Seeking Relief from Final Felony Conviction Under Code of Criminal Procedure Article 11.07. Applicant raised three grounds for relief:
    a. Applicant was denied effective assistance of counsel, based on Applicant being "forced to go to trial with an attorney whom he did not trust, had lost confidence in, and absolutely refused to communicate with;"
    b. Applicant was denied effective assistance of counsel, based on trial counsel's failure to investigate, develop, and present evidence of mitigating evidence at punishment; and
    c. Applicant was denied effective assistance of counsel, based on trial counsel's failure to present exculpatory facts in response to the State's evidence of his guilty.
2. On May 17, 2022, the State filed an Original Answer denying Applicant's allegations.
3. On June 2, 2022 the Court entered an Order Designating Issues and Order for Filing Affidavit.
4. On June 29, 2022, Mr. Bill Hines, an attorney who represented Applicant at trial, filed an affidavit pursuant to the Court's order.

5. On July 8, 2022, the State filed a Motion to Seal trial counsel's affidavit. The Court granted the State's motion on July 11, 2022.
6. The States files its Supplemental Answer to Code of Criminal Procedure Chapter 11.07 Writ Application with the following Proposed Findings of Fact, and Conclusions of Law and Proposed Order.

FINDINGS OF FACT

1. On or about April 18, 2014, Applicant was convicted of Aggravated Sexual Assault and sentenced to 65 years imprisonment in the Texas Department of Criminal Justice Institutional Division by a Travis County jury.
2. Mr. Hines has been a licensed attorney for over 30 years. Exhibit A, p.1.
3. Mr. Hines practices criminal law exclusively and is licensed in Texas, Florida, and multiple federal jurisdictions. Exhibit A, p.1.
4. Board certified in criminal law since 1997, Mr. Hines also worked eight years as a prosecutor. Exhibit A, p.1.
5. Mr. Hines has served as an instructor at law enforcement trainings, trial advocacy at University of Texas, and CLE events. Exhibit A, p.1.
6. Mr. Hines has tried over 100 criminal jury trials. Exhibit A, p.1.
7. During the course of his representation of Applicant, Mr. Hines met with Applicant while in custody and discussed the law and the facts of his case with him. Exhibit A, pp. 2-3.

8. In response to the State's pre-trial offer of 50 years in prison, Mr. Hines recommended the defense make a counteroffer of 20 years. Exhibit A, p.3. This was based on the strength of the State's case, Applicant's prior criminal history, and the risk of receiving a longer sentence after trial, given the State's indictment for the first degree felony offenses of aggravated sexual assault and aggravated kidnapping, both of which carried a punishment range of 5-99 years or life in prison. Exhibit A, p.3; TEX. PEN. CODE § 12.32.
9. The Court finds Mr. Hines's advice to Applicant to counter the State's plea offer with 20 years was reasonable and appropriate.
10. Applicant fled to Hawaii after committing the indicted offenses, where he was extradited and returned to Travis County. Exhibit D, R.R. 4:9.
11. Prior to trial, Applicant was advised by two different judges on two occasions that, because of the nature of the offenses and his flight to Hawaii, he would not likely be an appropriate candidate for a personal bond or a bond reduction. Exhibit D, R.R.4: 9-10; Exhibit D, R.R. 4:11; Exhibit F, R.R. 7:12; Exhibit F, R.R. 7:13.
12. Prior to trial, Applicant opted to cease communications with Mr. Hines. Exhibit A, p.2. He was advised on at least four occasions by four different judges that refusing to communicate with his attorney was not in his best

interest. Exhibit A, p. 3; Exhibit D, R.R. 4:6-7; Exhibit E, R.R. 6:5-6; Exhibit F, R.R.7:8; Exhibit G, R.R. 8:7-8.

13. During trial, Applicant resumed communication with Mr. Hines, where they discussed the law, trial strategy, and Applicant's constitutional rights. Exhibit A, p. 3.

14. At trial, evidence of Applicant's guilt was extensive and overwhelming, and included the following:

    a. Testimony of the victim, who described the offense in detail. Exhibit Q, R.R. 10: 41-45, 47-49, 51-54, 63-64.

    b. Testimony of a witness familiar with Applicant, who observed Applicant behaving inappropriately toward the victim prior to and leading up to the offense and also observed the victim with substantial physical injury the following day. Exhibit P, R.R. 10:16, 21.

    c. Testimony of an uninvolved third party who encountered the victim immediately after the offense occurred, heard her outcry to being "beat up and raped," observed her demeanor and her injuries consistent with someone who had been assaulted, and saw a car matching the description of Applicant's driving away erratically from the scene. Exhibit N, R.R. 9: 166-68; Exhibit O, R.R. 10:12,34.

d. Testimony of several Austin Police Department (APD) officers who responded to the scene within minutes of receiving a 911 call and located physical evidence to corroborate the victim's account of events. Exhibit N, R.R. 9:156, 160-63.

e. Results of a Sexual Assault Nurse Exam (SANE), which corroborated victim's account of being strangled and sexually assaulted. Exhibit S, R.R. 10:112-54.

f. Results of DNA testing, which confirmed the presence of Applicant's DNA on the victim's neck and hands. Exhibit T, R.R. 11:18-20.

g. Evidence of flight to Hawaii. Exhibit U, R.R. 11:37-38.

15. Mr. Hines could identify no witnesses who could testify to exculpatory evidence for Applicant during the guilt/innocence portion of trial. Exhibit A, p. 6.

16. Mr. Hines concluded that a "thorough and complete examination of all appropriate State witnesses" and developing "a weakness and doubt on individual elements of the offenses" would be the best trial strategy. Exhibit A, p.6.

17. Faced with a strong State's case and admissions by the Applicant, Mr. Hines made the strategic call to challenge the deadly weapon allegation and pursue a lesser included offense. Exhibit A, p.6.

18. At trial, Mr. Hines made appropriate objections in an attempt to shield Applicant from the damage of his own prior actions and criminal record. Exhibit I, R.R. 12:20-22; Exhibit J, R.R. 12: 44, 51-57, 62.

19. After discussions with Applicant and his mother about who may be an appropriate witness for Applicant in punishment, Mr. Hines identified no suitable witnesses and instead opted for a strategy involving cross-examination of State's expert witness, Dr. Matthew Ferrara. Exhibit A, p.4-5.

20. Dr. Ferrara's testimony in punishment indicated that Applicant had distinguished himself as a uniquely dangerous individual and that he needed "to go to prison for a very long time." Exhibit K, R.R. 13:11-18; Exhibit L, R.R. 13:25-26.

21. With an eye on mitigation, Mr. Hines used cross examination of Dr. Ferrara to elicit testimony about his knowledge of and experience with treatment for sex offenders, including medication, therapy, and methods of supervised release, such a parole, probation, electronic monitoring and surveillance. Exhibit L, R.R. 13:29-31.

22. Dr. Ferrara testified on cross examination that it was "possible" that Applicant would not reoffend, that one's risk of reoffending generally drops off after age 50, and that, hypothetically, a person who was sexually abused

as a child would not necessarily repeat the same conduct in his own life. Exhibit L, R.R. 13:27-29, 32-34.

23. Mr. Hines's decision not to offer evidence of Applicant's alleged experience as a child victim of sexual assault and to instead elicit hypothetical testimony through State's witness Dr. Ferrara, was strategic and calculated to spare Applicant of exposure to testimony that could have been inculpatory. Exhibit A, pp. 4-5.

24. The Court finds the testimony of any punishment witnesses identified by Applicant in consultation with Mr. Hines would not have impacted Applicant's ability to prevail at trial, nor would they have impacted any attempts at mitigating Applicant's punishment.

25. In his closing argument during the punishment phase of trial, Mr. Hines advocated for the jury to consider Applicant's age and his own future, as well as the ability of the State to monitor him outside of confinement in prison. Exhibit M, R.R. 13:58-59.

26. The record contains no evidence of Applicant being insane at the time of the offense, of Applicant being evaluated for sanity, or of Applicant raising insanity as a defense at trial.

27. The Court finds any fact issues related to Applicant's sanity at the time of the offense would not have impacted Applicant's ability to prevail at trial, nor would it have impacted any attempts at mitigating Applicant's punishment.

28. Applicant's decision to depart from the scene of the offense quickly, leave the victim by the side of the roadway, and his subsequent flight to Hawaii are indicators that he knew his conduct was wrong.

29. The Court finds Mr. Hines's assertions credible.

30. The Court finds Mr. Hines's advocacy on Applicant's behalf was diligent and zealous.

31. The Court finds Applicant's assertions of ineffectiveness not credible and contrary to the evidence.

32. Applicant's conviction became final on April 18, 2014, yet Applicant did not file his initial writ application until April 20, 2022.

33. The Court finds Applicant fails to plead any justifiable excuse or excusable neglect in his writ application for this delay.

34. Because of Applicant's lengthy delay in bringing this writ application, Mr. Hines no longer has his complete trial file. Exhibit A, p. 1.

35. Mr. Hines relied on personal recollection, court filings, and the trial record to write his affidavit. Exhibit A, pp.1-2.

36. Trial counsel's inability to retrieve his entire file and to have access to his own work product prejudices the State's ability to address applicant's claim of ineffective assistance of counsel claim.

CONCLUSIONS OF LAW

1. In post-conviction proceedings, Applicant has the burden of proving facts which, if true, would entitle him to relief. *Ex parte Medina*, 361 S.W.3d 633, 637 (Tex. Crim. App. 2011). Applicant bears the burden of proving his post-conviction claims by a preponderance of the evidence. *Ex parte Torres*, 483 S.W.3d 35, 43 (Tex. Crim. App. 2016). The Court finds Applicant has failed to meet his burden of proof.
2. An applicant must do more than state mere conclusions of law or allegations of error. Each claim must be supported by adequate facts. *Ex parte Maldonado*, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985); *Ex parte McPherson,* 32 S.W.3d 860, 861 (Tex. Crim. App. 2000). The Court finds Applicant has failed to allege adequate facts to support his claims of ineffective assistance.
3. To prevail on a complaint of ineffective assistance of counsel, an applicant must demonstrate that: (1) counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *Hernandez v. State*, 726 S.W.2d 53, 56–57 (Tex. Crim. App. 1986).

4. This standard is to be judged by the totality of the representation, not by isolated acts or omissions by counsel. *Robertson v. State*, 187 S.W.3d 475, 483 (Tex. Crim. App. 2006).
5. An attorney's efforts are not to be viewed through hindsight, and the fact that another attorney might have pursued a different course will not support a finding of ineffectiveness. *Id.*
6. The Sixth Amendment makes no guarantee of a "meaningful relationship" between an accused and his counsel. *Morris v. Slappy*, 461 U.S. 1, 13-14 (1983). Applicant has failed to demonstrate that any lapse in communication with trial counsel resulted in deficient performance, or that his outcome at trial would have been different.
7. In order to prevail on a claim of ineffective assistance of counsel for failure to file a motion, Applicant must demonstrate he would have prevailed on said motion. *Jackson v. State*, 973 S.W.2d 954, 957 (Tex. Crim. App. 1998); *Roberson v. State*, 852, S.W.2d 508, 511 (Tex. Crim. App. 1993).
8. Applicant has failed to show he would have prevailed on a motion for a personal bond or a bond reduction and therefore has not demonstrated that

trial counsel was ineffective for any failure to advocate for Applicant's release on a personal bond or reduced bond.

9. The "decision whether to present witnesses is largely a matter of trial strategy." *Rodd v. State*, 886 S.W.2d 381, 384 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd.).

10. "[C]ross-examination is an art, not a science, and it cannot be adequately judged in hindsight." *Ex parte McFarland*, 163 S.W.3d 743, 756 (Tex. Crim. App. 2005).

11. To show an ineffective assistance of counsel claim during punishment, an Applicant is required to prove both deficient performance and prejudice arising from the deficient attorney performance. *Hernandez v. State,* 988 S.W.2d 770, 772 (Tex. Crim. App. 1999); see also *Welch v. State*, No. 02-17-00413-CR, 2019 Tex. App. LEXIS 679, at *13 (Tex. App.—Fort Worth Jan. 31, 2019, pet. ref'd).

12. "Moreover, an attorney's decision not to present particular witnesses at the punishment stage may be a strategically sound decision if the attorney bases it on a determination that the testimony of the witnesses may be harmful, rather than helpful, to the defendant." *Shanklin v. State,* 190 S.W.3d 154, 165 (Tex. App.—Houston [1st Dist.] 2005)(citing *Weisinger v. State*, 775 S.W.2d 424, 427 (Tex. App.—Houston [14th Dist] 1989, pet. ref'd.)(holding that it is

trial counsel's prerogative, as a matter of trial strategy to decide which witnesses to call).

13. Applicant has failed to demonstrate that any witnesses—called by his attorney in guilt/innocence or punishment—would have allowed him to prevail at trial or resulted in a shorter sentence.

14. A person is insane at the time of the offense if "as a result of severe mental disease or defect" that Applicant "did not know that his conduct was wrong." TEX. CODE CRIM. PROC. § 8.01. Under Texas law, this "does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." TEX. CODE CRIM. PROC. § 8.01.

15. Applicant fails to allege any evidence indicating he was insane at the time of this offense. *See Thibodeaux v. State*, 733 S.W.2d 668, 669 (Tex. App.—Austin 1987, pet. ref'd)(noting that trial counsel made a tactical decision not to pursue an insanity defense and that evidence at trial of Appellant's demeanor tended to show "only the remorse and guilt that would ordinarily attend the death of one's child by one's own hand."); *See also Brown v. State*, 129 S.W.3d 762, 767 (Tex. App.—Houston [1st Dist.] 2004, no pet.)(finding Appellant did not meet the *Strickland* standard when "No evidence in the record demonstrates the Appellant was incompetent or insane.")

16. Deficient performance means that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Ex parte Napper*, 322 S.W.3d 202, 246 (Tex. Crim. App. 2010)(quoting *Strickland*, 466 U.S. at 687).

17. Because Mr. Hines has articulated that his work on behalf of Applicant was strategic, tactical, and intended to protect Applicant, Applicant has failed to show that counsel's performance was so deficient as to render the result of the proceedings unreliable. Applicant has not met the first *Strickland* prong. *Strickland v. Washington*, 466 U.S. 668, 687 (U.S. 1984).

18. Applicant has not shown a reasonable probability that, but for his counsel's errors, the result of the proceeding would have been different. Applicant shows no evidence that, had Mr. Hines raised the fact issues alleged by Applicant regarding his alleged experience as a victim of sexual assault, the outcome would have been different. In fact, it is possible the outcome at trial could have been worse than the sentence of 65 years in prison. Applicant has failed to show he was prejudiced by Counsel's allegedly deficient performance. *Strickland v. Washington*, 466 U.S. 668 (1984).

19. Applicant shows no evidence that testimony of Mr. Rocky Leeper or Applicant's mother would have resulted in a different outcome at either phase of his trial. In fact, it is possible that, had both witnesses testified and

did so truthfully, that their testimony would be more inculpatory than exculpatory for Applicant. Exhibit A, p. 4.

20. Once Mr. Hines learned that Applicant intended to lie under oath at trial, Mr. Hines had an ethical duty to advise against that plan. Exhibit A, p. 4.

21. Under *Strickland*, the defendant must prove, by a preponderance of the evidence, that there is, in fact, no plausible professional reason for a specific act or omission." *Bone v. State*, 77 S.W.3d 828, 836 (Tex. Crim. App. 2002). Because Mr. Hines has enumerated, and the record demonstrates, the ways in which cross examination of the State's witnesses, making proper objections, and challenging individual elements of the offense was an effective trial strategy, Applicant has not demonstrated ineffective assistance of counsel.

22. The evidence weighs against a finding that Applicant is entitled to relief.

23. The Court recommends that the Court of Criminal Appeals deny relief as to all three of Applicant's grounds.

24. Application of the common-law doctrine of laches to a long-delayed application for a writ of habeas corpus is appropriate in light of the equitable nature of both habeas corpus relief and the laches doctrine. *Ex parte Perez*, 398 S.W.3d at 210-11, 219. A number of difficulties may arise when an applicant delays the filing of his application for post-conviction relief for

many years, including the faded memories of attorneys and witnesses and the loss of evidence and trial records. *Id.* at 211.

25. The Court of Criminal Appeals has not identified any precise period of time after which laches necessarily applies, although the Court has recognized that delays of more than five years may generally be considered unreasonable in the absence of any justification for the delay. *Ex parte Perez*, 398 S.W.3d at 216, n.12, citing *Ex parte Florentino*, 206 S.W.3d 124, 125 (Tex.Crim.App. 2006) (Cochran, J., concurring) ("Eight years elapsed between the time applicant's conviction was affirmed and the time at which he may file a PDR. Normally, laches should bar any relief on this claim.").

26. The Court finds the eight-year delay in filing this writ application prejudices the State's ability to retry this case, if necessary. Applicant committed this aggravated sexual assault on July 30, 2012, over ten years ago. The significant delay necessarily leads to the diminished availability of the State's evidence, including witnesses, and the diminished memories of those witnesses.

27. The Court finds Applicant fails to show that he is entitled to equitable relief for any compelling reason, such as he is actually innocent or likely to prevail on the merits.

28. The Court concludes that Applicant's claim should be barred by the equitable doctrine of laches.

PRAYER

The State prays that this Court adopt these Proposed Findings of Fact and Conclusions of Law and recommend that the Applicant's grounds for relief be denied.

Respectfully submitted,

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Travis County, Texas

/s/ Danielle Tierney
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CERTIFICATE OF SERVICE

I certify that this document contains 3,241 words. I further certify that, on the 23rd day of September, 2022, a copy of the foregoing State's Proposed Findings of Fact and Conclusions of law was sent by mail to Applicant Samuel Adkins, TDCJ #01927447, French Robertson Unit, 12071 FM 3522, Abilene, Texas 79601.

/s/ Danielle Tierney
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No. D-1-DC-13-904105-A

EX PARTE	§	**IN THE DISTRICT COURT**
	§	
	§	**OF TRAVIS COUNTY, TEXAS**
	§	
SAMUEL ADKINS	§	**427TH JUDICIAL DISTRICT**

ORDER

The Court adopts the State's Proposed Findings of Fact and Conclusions of Law as its own and recommends that the relief Samuel Adkins ("Applicant") requests should be DENIED. The Court further orders and directs:

1. The Clerk of this Court to file this 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 Order to Applicant Samuel Adkins, TDCJ # 192447, French Robertson Unit, 12071 FM 3522, Abilene, Texas 79601 and to the Travis County District Attorney's Office.

SIGNED AND ENTERED this _____ day of _____, 2022

_____

Honorable Tamara Needles, Presiding Judge
427th Judicial District Court
Travis County, Texas

Additional material from this filing is available in the Clerk's Office.