

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



10/26/2022

TURCIOS, JUAN FRANCISCO Tr. Ct. No. F11-70886-P; F11-70896-PWR-
83,155-07

This is to advise that the Court has denied without written order motion for leave to file the original application for writ of mandamus.

Deana Williamson, Clerk

DISTRICT ATTORNEY DALLAS COUNTY
APPELLATE SECTION
133 N. RIVERFRONT BLVD, LB 19
DALLAS, TX 75207
* DELIVERED VIA E-MAIL *

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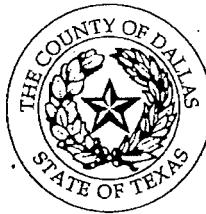
10/26/2022

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83,155-07

This is to advise that the Court has denied, without written order motion for leave to file the original application for writ of mandamus.

Deana Williamson, Clerk

JUAN FRANCISCO TURCIOS
JESTER III UNIT - TDC # 1790019
3 JESTER ROAD
RICHMOND, TX 77406



FELICIA PITRE
DALLAS COUNTY DISTRICT CLERK

DATE: October 14th, 2019

**RE: W11-70896-P(B)
W11-70886-P(B)**

EX PARTE: JUAN FRANCISCO TURCIOS

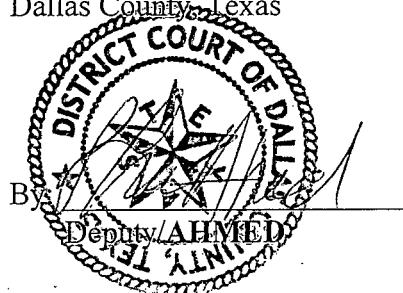
Dear Mr. /Ms. Turcios,

The application for Writ in the above styled cause has been referred to the
203rd Judicial District Court of Dallas, TX for processing

Please be advised that all future correspondence should indicate the above listed cause number.

Sincerely,

District Clerk
Dallas County, Texas





SHARON KELLER
PRESIDING JUDGE

BARBARA P. HERVEY
BERT RICHARDSON
KEVIN P. YEARY
DAVID NEWELL
MARY LOU KEEL
SCOTT WALKER
MICHELLE M. SLAUGHTER
JESSE F. MCCLURE, III
JUDGES

COURT OF CRIMINAL APPEALS

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

DEANA WILLIAMSON
CLERK
(512) 463-1551

SIAN SCHILHAB
GENERAL COUNSEL
(512) 463-1597

Tuesday, March 30, 2021

Juan Francisco Turcios
Jester Iii Unit - TDC # 1790019
3 Jester Road
Richmond, Tx 77406

Re: Turcios, Juan Francisco
CCA No. WR-83,155-05
Trial Court Case No. W11-70886-P(B) *W11-70896-P(B)*

IMPORTANT: PLEASE INFORM THIS COURT OF ALL ADDRESS CHANGES IN WRITING.

Your letter has been received. Please be advised your application for writ of habeas corpus was received on 4/15/2020. The status is: DISMISSED AS A SUBSEQUENT APPLICATION on 5/6/2020.

Sincerely,

Deana Williamson, Clerk

(CAUSE NO. W11-70896-P(B)
CAUSE NO. W11-70896-P(B)

EX PARTE * IN THE 203RD JUDICIAL
JUAN FRANCISCO TURCIOS, * DISTRICT COURT
APPLICANT * DALLAS COUNTY, TEXAS

ORDER DESIGNATING ISSUES

Having considered the applicant's Application for Writ of Habeas Corpus and the State's Response, the Court finds that controverted, previously unresolved facts material to the legality of the Applicant's confinement exist. The Court finds that each of the allegations set forth in the application are controverted, unresolved factual issues which require additional evidence and/or testimony to be resolved.

The court appoints April E. Smith to resolve the issues and prepare findings of fact and conclusions of law for the Court. The issues may be resolved by affidavits, depositions, interrogatories, or by hearings, as deemed necessary by the person appointed herein.

Above appointed attorney does not represent the Applicant. Applicant is not entitled to counsel at this time.

The Clerk of the Court is ORDERED to send a copy of this order to Applicant, or Applicant's counsel (if so represented) and to counsel for the State.

Signed this 16th day of October, 2019.

Rogued "Rocky" Jones
JUDGE

Turcios v. State

Court of Appeals of Texas, Fifth District, Dallas

October 7, 2013, Opinion Filed

No. 05-12-00839-CR, No. 05-12-00840-CR

Reporter

2013 Tex. App. LEXIS 12443; 2013 WL 5536939

JUAN FRANCISCO TURCIOS, Appellant v. THE STATE OF TEXAS, Appellee

Notice: PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: Petition for discretionary review refused by In re Turcios, 2014 Tex. Crim. App. LEXIS 442 (Tex. Crim. App., Apr. 2, 2014)

Petition for discretionary review refused by In re Turcios, 2014 Tex. Crim. App. LEXIS 448 (Tex. Crim. App., Apr. 2, 2014)

Prior History: [1] On Appeal from the 203rd Judicial District Court, Dallas County, Texas. Trial Court Cause Nos. F11-70886-P and F11-70896-P.

Case Summary

Overview

HOLDINGS: [1]-Under Tex. R. App. P. 24.2(c)(2), defendant's letter requesting appeals was sufficient to invoke the appellate court's jurisdiction over the appeals and his April 30 letter constituted a timely filed notice of appeal; [2]-The record did not rebut the presumption that defendant's trial counsel continued to represent him during the period for filing a motion for new trial or the presumption that a motion for new trial was considered by defendant and rejected, and defendant was not without counsel during the time period for filing a motion for new trial; [3]-The record did not support defendant's contention that he had a serious medical need that was unable to be met in prison; [4]-The sentences were not grossly disproportionate to the offenses committed.

Outcome

Judgment affirmed.

Counsel: For Appellants: Matthew J. Kita, Attorney at Law, Dallas, TX.

For Appellees: Patricia Popoff Noble, Assistant District Attorney, Dallas, TX; Craig Watkins, Dallas County District Attorney, Dallas, TX.

Judges: Before Justices O'Neill, Lang-Miers, and Evans. Opinion by Justice Evans.

Opinion by: DAVID EVANS

Opinion

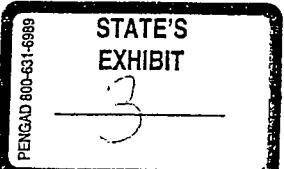
MEMORANDUM OPINION

Opinion by Justice Evans

Without the benefit of a plea-bargain agreement, Juan Francisco Turcios pleaded guilty to the offenses of burglary and aggravated assault with a deadly weapon. The trial court sentenced him to twenty years' imprisonment for each offense, to be served concurrently. Identifying two issues, appellant generally complains that he was denied effective assistance of counsel to prepare a motion for new trial challenging the constitutionality of his custodial sentence. We affirm.

FACTUAL BACKGROUND

Appellant was indicted for burglary and aggravated assault with a deadly weapon. Before he was arrested for these offenses, however, appellant was involved in a serious motorcycle accident. On the scheduled trial date, appellant appeared in court on crutches, waived his right to a jury trial, and entered an open plea of guilty to both offenses. At the sentencing hearing over two weeks later, appellant was using a walker. Appellant testified that "[The doctors] [...] could not finish all the surgeries because I, you know, came up with diabetes and high blood pressure and, you know, a whole lot of other things." Appellant further stated that he needed more surgery but could not get the surgeries if he was in prison. He noted, "They didn't want to do it because I need some radiation treatment for some kind of bone infection that I had from the accident." Appellant requested the trial court sentence him to probation because



STATE OF TEXAS
VSTO THE HONORABLE JUDGE OF SAID COURT:
PLA AGREEMENT

The defendant herein and the attorneys for both the defendant and the State waive a jury trial and make the following agreement:

Defendant's plea:

 Defendant will testify. Plea to enhancement paragraph(s):

Type of plea:

Open as to: Deferred Adjudication Community Supervision Fine Restitution
 Other:

State's recommendation:

10 TDC

Agreed sentence:

Confinement in (penitentiary) (State jail) (county jail) for 10 (years) (months) (days).
 Post-conviction community supervision, confinement probated for _____ (years) (months) (days).
 Deferred community supervision for _____ (years) (months) (days).
 Fine of \$ 2000 To be paid To be probated.
 Boot Camp Shock Probation Substance Abuse Felony Program
 Judicial Drug Treatment Center CENIKOR Dallas County Jail Chemical Dependency Program
 Restitution in the amount of \$ _____ Back-time NOT included
 Back-time included
 Defendant will sign waiver of extradition. Defendant knowingly and voluntarily waives appeal.
 Defendant waives a court reporter. Other:

CHANGE OF NAME (Applicable only if box is checked)
 The defendant having suggested that his/her true name is other than that set forth in the charging instrument, and having moved that the charging instrument and all other documents in this cause be amended to show his/her true name to be _____, said motion is hereby granted. It is so ordered.

COURT'S ADMONITIONS TO DEFENDANT

You are charged with the offense of: Burglary of a habitation, committing

The punishment range for the offense charged is:

1st Degree Felony, 3 - 99 years or Life and an optional fine not to exceed \$10,000.00.
 2nd Degree Felony, 2 - 20 years confinement and an optional fine not to exceed \$10,000.00.
 3rd Degree Felony, 2 - 10 years confinement and an optional fine not to exceed \$10,000.00.
 State Jail Felony, 180 days - 2 years State Jail and an optional fine not to exceed \$10,000.00.

You have an absolute right to a jury trial, to confront and cross-examine the witnesses against you, and to call witnesses in your own behalf. You have a right to testify, but you cannot be compelled to do so. The prosecuting attorney's recommendation as to punishment is not binding on the Court. You will be permitted to withdraw your plea if the Court rejects any plea bargain made in this case. If the punishment assessed by the Court is not greater than that which you have plea-bargained, you may not appeal on any matter in the case unless the Court grants permission for the appeal or the matters appealed were raised by written motion filed and ruled on before the plea. If you enter a plea of guilty or *nolo contendere* and there is no plea bargain, the court may assess your punishment anywhere within the range allowed by law. If you are not a citizen of the United States, a plea of guilty or *nolo contendere* may, and under current Federal Immigration rules is almost certain to, result in your deportation, exclusion from admission to the United States, or denial of naturalization. If you have a court-appointed attorney, you have a right to ten days from the date of the attorney's appointment to prepare for trial. You have the right to be tried on an indictment returned by a Grand Jury, and, unless you are on bond, a right to two entire days after being served with a copy of the charging instrument before being arraigned. If you receive unadjudicated community supervision and violate its conditions, you may be arrested and subjected to a hearing limited to determining whether or not guilt should be adjudicated. If guilt is adjudicated, no appeal may be taken from the Court's decision, and the full range of punishment is open to the Court. All proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and an appeal, then continue as if the adjudication of guilt had not been deferred. [In sex offense cases, see Court's Admonition to Sex Offenders, which is incorporated by reference and attached hereto.]

DEFENDANT'S STATEMENTS AND WAIVERS

With the approval of counsel, defendant makes the following statements and waivers. I am the accused in the charging instrument and am mentally competent. I understand the nature of the accusation made against me, the range of punishment for such offense, and the consequences of a plea of guilty or *nolo contendere*. I understand that I have an absolute right to a jury trial, that I have the right to remain silent, that anything I say can and will be used against me, that I have the right to confront and cross-examine the witnesses against me, and that I have a right to be tried upon an indictment returned by a grand jury. I understand that if I am not a United States citizen, a plea of guilty or *nolo contendere* will probably result in

3
my deportation from the United States, exclusion from admission to the United States, or denial of naturalization under Federal law.

I hereby waive my right to be tried on an indictment returned by a grand jury; any and all defects, errors, or irregularities, whether of form or substance, in the charging instrument; my right to a jury trial; and my right to remain silent. I waive arraignment and reading of the charging instrument; the appearance, confrontation, and cross-examination of witnesses; my right to ten days to prepare for trial after the appointment of counsel (if counsel has been appointed); and the preparation of a pre-sentence report. I consent to the oral or written stipulation of evidence or testimony, to the introduction of testimony by affidavits or written statements of witnesses, and to all other documentary evidence.

I admit and judicially confess that I committed the offense of Buying of a Child on 2/27/14 exactly as alleged in the charging instrument. I affirm that my plea and judicial confession are freely and voluntarily made, and not influenced by any consideration of fear, persuasion, or delusive hope. •

I understand the admonitions regarding unadjudicated community supervision, and that I will be required to register as a sex offender if convicted of, or placed on community supervision for, one of the offenses enumerated under Court's Admonition to Sex Offenders, attached hereto. I understand that under the Uniform Extradition Act, should I be charged with a violation of my community supervision and be arrested in another state, I have the right to require the issuance and service of a warrant of extradition, the right to hire legal counsel, or, if indigent, to have counsel appointed, and the right to apply for a writ of habeas corpus to contest my arrest and return to this State.

I voluntarily and knowingly waive my rights under the Extradition Act, waive extradition, and waive my right to contest my return to the State of Texas from any jurisdiction where I may be found. I understand and agree that such waiver is irrevocable.

I understand that I have a right to appeal to the Court of Appeals. After consulting with my attorney, I do expressly, voluntarily, knowingly, and intelligently give up and waive my right to any appeal if the Court follows the terms of the State's recommendation as to sentencing.

I waive and give up my right to have a court reporter make a record of these court proceedings as provided by Rule 13.1 of the Texas Rules of Appellate Procedure.

DEFENDANT'S PLEA TO ENHANCEMENT PARAGRAPH(S) (Applicable only if box is checked)
I, the defendant, plead true to the enhancement allegations included in the (second), (third), (second and third) paragraph(s) which is/are contained in the charging instrument, and judicially confess that I am the same person who was previously duly and legally convicted of the offense(s) alleged therein.

SIGNATURES AND ACKNOWLEDGMENTS

I, the defendant herein, acknowledge that my attorney has explained to me, and I have read and I understand, all the foregoing admonitions and warnings regarding my rights and my plea, and that my statements and waivers are knowingly, freely, and voluntarily made, with full understanding of the consequences. I request that the Court accept all my waivers, statements, agreements, and my plea.

4/9/12

Date

J.W.

Defendant

Printed Name: _____

I have consulted with the defendant, whom I believe to be competent, concerning the plea in this case and have advised the defendant of his/her rights. I approve and agree to all waivers, statements, and agreements of the defendant herein and ask the Court to accept them and the defendant's plea.

4/9/12

Date

Attorney for Defendant

Printed Name: John

State Bar No. _____

As attorney for the State, I hereby consent to and approve the requests, waivers, agreements, and stipulations in this instrument.

4/9/12

Date

CRAIG WATKINS, Criminal District Attorney, Dallas County

By: Craig Watkins

Assistant District Attorney

Printed Name: John Chees Hanfion

State Bar No. 24057375

It appearing to the Court that the defendant is mentally competent and is represented by counsel, that the defendant understands the nature and consequences of the charge, and that all the parties have consented to and approved the waiver of jury trial and stipulations of evidence, the Court finds the waivers, agreements, and plea to have been knowingly, freely, and voluntarily made, approves the waivers and agreements, accepts the defendant's plea, approves the stipulation of testimony, and approves the change of name contained herein (if applicable).

4/9/12

Date

Judge

IN THE
DISTRICT COURT
DALLAS COUNTY, TEXAS

STATE OF TEXAS

VS

9 Tucios

PLEA AGREEMENT: 02

TO THE HONORABLE JUDGE OF SAID COURT:

The defendant herein and the attorneys for both the defendant and the State waive a jury trial and make the following agreement:

Defendant's plea:

Defendant will testify. Guilty Nolo contendere
 Defendant will NOT testify.

Plea to enhancement paragraph(s):

True Not true

Type of plea:

Open as to: Deferred Adjudication Community Supervision Fine Restitution
 Other: _____

State's recommendation: 10 TDC + 250

Agreed sentence:

Confinement in (penitentiary) (state jail) (county jail) for 10 (years) (months) (days).
 Post-conviction community supervision, confinement probated for _____ (years) (months) (days).
 Deferred community supervision for _____ (years) (months) (days).
 Fine of \$ 8500 To be paid To be probated.

Boot Camp Shock Probation Substance Abuse Felony Program
 Judicial Drug Treatment Center CENIKOR Dallas County Jail Chemical Dependency Program
 Restitution in the amount of \$ _____ Back-time included Back-time NOT included

Defendant will sign waiver of extradition. Defendant knowingly and voluntarily waives appeal.
 Defendant waives a court reporter. Other: FFFU, MFDW, SA/NO CONTACT

[] CHANGE OF NAME (Applicable only if box is checked)

The defendant having suggested that his/her true name is other than that set forth in the charging instrument, and having moved that the charging instrument and all other documents in this cause be amended to show his/her true name to be _____, said motion is hereby granted. It is so ordered.

COURT'S ADMONITIONS TO DEFENDANT

You are charged with the offense of: Aggravated Assault

The punishment range for the offense charged is:

[] 1st Degree Felony, 5 - 99 years or Life and an optional fine not to exceed \$10,000.00.
 2nd Degree Felony, 2 - 20 years confinement and an optional fine not to exceed \$10,000.00.
 3rd Degree Felony, 2 - 10 years confinement and an optional fine not to exceed \$10,000.00.
 State Jail Felony, 180 days - 2 years State Jail and an optional fine not to exceed \$10,000.00.

You have an absolute right to a jury trial, to confront and cross-examine the witnesses against you, and to call witnesses in your own behalf. You have a right to testify, but you cannot be compelled to do so. The prosecuting attorney's recommendation as to punishment is not binding on the Court. You will be permitted to withdraw your plea if the Court rejects any plea bargain made in this case. If the punishment assessed by the Court is not greater than that which you have plea-bargained, you may not appeal on any matter in the case unless the Court grants permission for the appeal or the matters appealed were raised by written motion filed and ruled on before the plea. If you enter a plea of guilty or *nolo contendere* and there is no plea bargain, the court may assess your punishment anywhere within the range allowed by law. If you are not a citizen of the United States, a plea of guilty or *nolo contendere* may, and under current Federal Immigration rules is almost certain to, result in your deportation, exclusion from admission to the United States, or denial of naturalization. If you have a court-appointed attorney, you have a right to ten days from the date of the attorney's appointment to prepare for trial. You have the right to be tried on an indictment returned by a Grand Jury, and, unless you are on bond, a right to two entire days after being served with a copy of the charging instrument before being arraigned. If you receive unadjudicated community supervision and violate its conditions, you may be arrested and subjected to a hearing limited to determining whether or not guilt should be adjudicated. If guilt is adjudicated, no appeal may be taken from the Court's decision, and the full range of punishment is open to the Court. All proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and an appeal, then continue as if the adjudication of guilt had not been deferred. [In sex offense cases, see Court's Admonition to Sex Offenders, which is incorporated by reference and attached hereto.]

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With the approval of counsel, defendant makes the following statements and waivers. I am the accused in the charging instrument and am mentally competent. I understand the nature of the accusation made against me, the range of punishment for such offense, and the consequences of a plea of guilty or *nolo contendere*. I understand that I have an absolute right to a jury trial, that I have the right to remain silent, that anything I say can and will be used against me, that I have the right to confront and cross-examine the witnesses against me, and that I have a right to be tried upon an indictment returned by a grand jury. I understand that if I am not a United States citizen, a plea of guilty or *nolo contendere* will probably result in

my deportation from the United States, exclusion from admission to the United States, or denial of naturalization under Federal law. 2

I hereby waive my right to be tried on an indictment returned by a grand jury; any and all defects, errors, or irregularities, whether of form or substance, in the charging instrument; my right to a jury trial; and my right to remain silent. I waive arraignment and reading of the charging instrument; the appearance, confrontation, and cross-examination of witnesses; my right to ten days to prepare for trial after the appointment of counsel (if counsel has been appointed); and the preparation of a pre-sentence report. I consent to the oral or written stipulation of evidence or testimony, to the introduction of testimony by affidavits or written statements of witnesses, and to all other documentary evidence.

I admit and judicially confess that I committed the offense of Aggravated Assault on 2/27/12 exactly as alleged in the charging instrument. I affirm that my plea and judicial confession are freely and voluntarily made, and not influenced by any consideration of fear, persuasion, or delusive hope of pardon or parole.

I understand the admonitions regarding unadjudicated community supervision, and that I will be required to register as a sex offender if convicted of, or placed on community supervision for, one of the offenses enumerated under Court's Admonition to Sex Offenders, attached hereto. I understand that under the Uniform Extradition Act, should I be charged with a violation of my community supervision and be arrested in another state, I have the right to require the issuance and service of a warrant of extradition, the right to hire legal counsel, or, if indigent, to have counsel appointed, and the right to apply for a writ of habeas corpus to contest my arrest and return to this State.

[] I voluntarily and knowingly waive my rights under the Extradition Act, waive extradition, and waive my right to contest my return to the State of Texas from any jurisdiction where I may be found. I understand and agree that such waiver is irrevocable.

[] I understand that I have a right to appeal to the Court of Appeals. After consulting with my attorney, I do expressly, voluntarily, knowingly, and intelligently give up and waive my right to any appeal if the Court follows the terms of the State's recommendation as to sentencing.

[] I waive and give up my right to have a court reporter make a record of these court proceedings as provided by Rule 13.1 of the Texas Rules of Appellate Procedure.

[] DEFENDANT'S PLEA TO ENHANCEMENT PARAGRAPH(S) (Applicable only if box is checked)
I, the defendant, plead true to the enhancement allegations included in the (second), (third), (second and third) paragraph(s) which is/are contained in the charging instrument, and judicially confess that I am the same person who was previously duly and legally convicted of the offense(s) alleged therein.

SIGNATURES AND ACKNOWLEDGMENTS

I, the defendant herein, acknowledge that my attorney has explained to me, and I have read and I understand, all the foregoing admonitions and warnings regarding my rights and my plea, and that my statements and waivers are knowingly, freely, and voluntarily made with full understanding of the consequences. I request that the Court accept all my waivers, statements, agreements, and my plea.

4/9/12
Date

X Jen P
Defendant
Printed Name: _____

I have consulted with the defendant, whom I believe to be competent, concerning the plea in this case and have advised the defendant of his/her rights. I approve and agree to all waivers, statements, and agreements of the defendant herein and ask the Court to accept them and the defendant's plea.

4/9/12
Date

Attorney for Defendant
Printed Name: Connie
State Bar No. _____

As attorney for the State, I hereby consent to and approve the waivers, agreements, and stipulations in this instrument.

4/9/12
Date

CRAIG WATKINS, Criminal District Attorney, Dallas County

By:
Assistant District Attorney
Printed Name: J. Cheis Hawkins
State Bar No. 24057375

It appearing to the Court that the defendant is mentally competent and is represented by counsel, that the defendant understands the nature and consequences of the charge, and that all the parties have consented to and approved the waiver of jury trial and stipulations of evidence, the Court finds the waivers, agreements, and plea to have been knowingly, freely, and voluntarily made, approves the waivers and agreements, accepts the defendant's plea, approves the stipulation of testimony, and approves the change of name contained herein (if applicable).

4/9/12
Date

Judge

1 THE COURT: State have anything at this time?

2 MS. HAWKINS: I'd just like it to be on the
3 record that my offer is for 15 years TDC.

4 MR. JOHNSON: I think you put on the plea
5 bargain ten.

6 MS. HAWKINS: He's going open.

7 MR. JOHNSON: He's going open.

8 THE COURT: Okay. Any questions from you, sir?

9 THE DEFENDANT: No.

10 THE COURT: Okay. We're going to pass this for
11 sentencing.

12 Mr. Johnson, if you'll get a date.

13 MR. JOHNSON: April 26th.

14 THE COURT: I'll see you on April 26th. I'm
15 sure your lawyer has told you any witnesses that you want to
16 bring on that date to testify in your behalf, you have that
17 right to do too. Thank you. That concludes this hearing.

18 (PROCEEDINGS RECESSED.)

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his plea were fully explained to Turcios and the decision to plead guilty was both knowingly and voluntarily made.

25. Further, during the hearing Turcios agreed that he was aware of some impeaching information, but decided to forego the opportunity to contest his guilt.
26. Johnson did not violate then-existing standards of conduct, did not fail to discharge a then-existing duty, and was not ineffective under the first prong of the *Strickland* test.
27. On the current record, Turcios has not established that Johnson's advice to plead guilty, given the alternatives, was imprudent or unprofessional. Therefore, the claim that Johnson's advice was inadequate fails under the second prong of *Strickland*.
28. For these same reasons, Turcios's claim that his plea was involuntary fails.
29. To the extent that Turcios suggests that he had any alternative but to accept the plea, he has failed to establish prejudice—that the outcome of the proceeding would have been any different, as judged under the second prong of *Strickland*.

Victim Impact Testimony

30. Throughout his writ, Turcios complains that victim impact testimony from the victims of the assault was improperly admitted. However, the law is contrary

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