

Danny Wayne Alcoser
TDCJ-ID # 2187801
Robertson Unit
12071 F.M. 3522
Abilene, Texas 79601

April 6, 2023

RE: Notice to Parties - Supreme Court Rule 12.6

Dear Sir or Madam,

This notice is to serve you with the Knowledge that you may be considered a non-interested party to the outcome of the petitioner's petition for writ of certiorari filed with the United States Supreme Court. However, if you strongly feel otherwise, you may promptly notify the Supreme Court Clerk, with service on the other parties, of an intention to remain a party.

Respectfully,

Danny Wayne Alcoser

cc.

- Tate N. Saunders
- E. Alan Bennett
- Brittany L. Lannen
- Ralf T. Strothers
- Thomas C. West
- Berry N. Johnson
- Joshua "Josh" Tetens
- Hilary LaBorde
- Gabrielle A. Massey
- Sterling A. Harmon

*note: this case is pending the application of a writ number. You may use the following application number to help direct the Supreme Court Clerk find the case number applied after filing.

Application No. 22A749

Challenge to Constitutionality of a State Statute

Print

This form must be completed by a party filing a petition, motion or other pleading **challenging the constitutionality of a state statute**. The completed form must be filed with the court in which the cause is pending as required by Section 402.010 (a-1), Texas Government Code.

Cause Number (For Clerk Use Only):

Court (For Clerk Use Only):

Styled: Danny Wayne Alcoser v. The State of Texas

(e.g., John Smith v. All American Insurance Co.; in re Mary Ann Jones; In the Matter of the Estate of George Jackson)

Contact information for party* challenging the constitutionality of a state statute. (*If party is not a person, provide contact information for party, party's representative or attorney.)

Name: Danny Wayne Alcoser # 2187801 Telephone:
Address: 12071 F.M. 3522 Fax:
City/State/Zip: Abilene, Texas 79601 State Bar No. (if applicable):
Email:

Person completing this form is: ☐ Attorney for Party ☒ Unrepresented Party ☐ Other:

Identify the type of pleading you have filed challenging the constitutionality of a state statute.

☒ Petition ☐ Answer ☐ Motion (Specify type): for Writ of Certiorari
☐ Other:

Is the Attorney General of the State of Texas a party to or counsel in this cause?

☐ Yes ☒ No

List the state statute(s) being challenged in your pleading and provide a summary of the basis for your challenge. (Additional pages may be attached if necessary.)

Texas Penal Code 22.01 (a)(1), (b)(2)(B) provides that a person commits an offense if the person intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse. An offense as described above is a Class A misdemeanor but becomes a felony if committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005 of the Texas Family Code if the offense is described as impeding the normal breathing or circulation of the blood of the person by applying pressure to the throat or neck.

When the relevant relationship is removed from an offense of this nature, does the Texas statute then support a Class A misdemeanor aggravated assault?

When the relevant relationship is removed from (b)(2)(B), to what court lies jurisdiction?

See Ortiz v. State, 623 S.W.3d 804 (Tex.Crim.App.2021)(Judge Keller's dissent describes impeding as an aggravated element by which the nature of conduct lead to the result of the offense). Compare with Holoman v. State, 620 S.W.3d 141 (Tex.Crim.App.2021)(describes how subject-matter jurisdiction is conferred under this penal code).

Does the language of Article 11.07 of the Code of Criminal Procedure disallow an applicant/appellant from seeking relief under the sufficiency of evidence ground toward a claim of innocence?

For example, what happens when an attorney lies about filing a motion for trial and misleads the client into believing that motion would become a part of the appellate record on appeal; especially when the motion's claims are based on matters directly related to sufficiency of evidence issues? However, following an abatement proceeding - during which time counsel was found deficient in performance for not filing a motion for new trial - the court of appeals, with an incomplete record, affirms a conviction. Then thereafter, when the applicant/appellant seeks review and remedy of a procedural error, the Texas Court of Criminal Appeals uses its discretionary power to refuse a request of review over a court of appeals abuse of discretion for entering a judgment without first curing a Due Process deprivation.

Applicant/Appellant/Petitioner has found nothing in Article 11.07 that forecloses one's rights to collaterally challenge sufficiency of the evidence when pertains to the innocence. Specifically, those elements selected by the State to secure a conviction of an offense; moreover, when the selected elements are based on nothing more than falsely referenced facts themselves, how does one argue factual sufficiency when Texas foreclosed that avenue?

See *Lefkowitz v. United States*, 446 F.3d 788 (8th Cir.2006) (issues that been raised and decided on a motion for new trial cannot be reconsidered in a subsequent collateral attack); see also *Ex parte Selbt*, 442 S.W.2d 706, 708 (Tex.Crim.App.1969)(matter[s] cannot be raised on appeal where a motion for new trial was not filed within Ten days. A fortiori, it cannot be raised years later in a collateral attack on the judgment).

See *Ex parte, Banspach*, 130 Tex. Crim. 3, 91 S.W.2d 365 (1936) (the merits of a case involving the guilt or innocence is not the proper subject of inquiry in a habeas proceeding); see also *Ex parte, Sanchez*, 918 S.W.2d 526, 527 (Tex.Crim.App.1996)(the Great Writ should not be used to litigate matters which should been raised on appeal).

See *Brooks v. State*, 323 S.W.3d 893 (Tex.Crim.App.2010)

The Texas Court of Criminal Appeals abolished factual sufficiency review as it applies to criminal convictions. *Id.*

Is one to remain illegally confined in a Hot Texas Prison based on opinion by the Texas high court judges over the form of its procedure which permits one to collaterally attack one's conviction? Unfortunately, it looks that way. What is your opinion?