

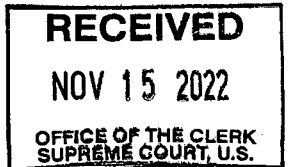
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

ARGUSTUS CHARLES CHOYCE — PETITIONER  
(Your Name)

VS.

BOBBY LUMPKIN — RESPONDENT(S)



MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF  
TEXAS, TEXARKANA DIVISION

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: \_\_\_\_\_  
\_\_\_\_\_, or

☐ a copy of the order of appointment is appended.

Argustus Charles Choyce  
(Signature)

**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, ARABUSTUS CHARLES CHOYCE, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Self-employment	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Interest and dividends	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Gifts	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Alimony	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Child Support	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Unemployment payments	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Other (specify): <u>Family</u>	\$ <u>10.00</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
<b>Total monthly income:</b>	\$ <u>10.00</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA	NA	NA	\$ 0
			\$ 0
			\$ 0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA	NA	NA	\$ 0
			\$ 0
			\$ 0

4. How much cash do you and your spouse have? \$ 0  
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
NA	\$ 0	\$ NA
	\$ 0	
	\$ 0	

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home  
Value NA

☐ Other real estate  
Value NA

☐ Motor Vehicle #1  
Year, make & model \_\_\_\_\_  
Value NA

☐ Motor Vehicle #2  
Year, make & model \_\_\_\_\_  
Value NA

☐ Other assets  
Description \_\_\_\_\_  
Value NA

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>0</u>	\$ <u>0</u>	\$ <u>0</u>
<u>0</u>	\$ <u>0</u>	\$ <u>N/A</u>
<u>0</u>	\$ <u>0</u>	\$ <u>N/A</u>

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>N/A</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>N/A</u>
Food	\$ <u>0</u>	\$ <u>N/A</u>
Clothing	\$ <u>0</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>0</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>0</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>NA</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>NA</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>NA</u>
Life	\$ <u>0</u>	\$ <u>NA</u>
Health	\$ <u>0</u>	\$ <u>NA</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>NA</u>
Other: _____	\$ <u>0</u>	\$ <u>NA</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ <u>NA</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>NA</u>
Credit card(s)	\$ <u>0</u>	\$ <u>NA</u>
Department store(s)	\$ <u>0</u>	\$ <u>NA</u>
Other: _____	\$ <u>0</u>	\$ <u>NA</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>NA</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>NA</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>NA</u>
<b>Total monthly expenses:</b>	\$ <u>0</u>	\$ <u>NA</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

*In an order made on 9-15-21 by United States Magistrate Judge Caroline M. Craven, found that appellant meets the indigence requirements of 28 U.S.C. § 1915*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 12, 2022

  
(Signature)

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
RECORDS RELEASE  
AUTHORIZATION**

I, the below named and numbered inmate, hereby authorize the Texas Department of Criminal Justice to release records pertaining to my trust fund account, as requested by Supreme Court of United States (Identify Court, Attorney, or entity as defined in Rule 3.9.2.1 – Special Correspondence Rules).

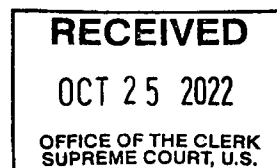
I, Inmate Augustus Choyce, TDCJ # 2185811,  
being presently incarcerated at the Stiles Unit Unit/Facility of the  
Texas Department of Criminal Justice, in JEFFERSON County, Texas  
declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 12 day of OCTOBER, 2022.

By: Augustus Charles Choyce Witness: Anguonita J. B.  
(Inmate Signature) (Approved- Witnessing Authority Signature)


**INSTRUCTIONS:**

1. The inmate will complete the above information, then sign and date the Records Release Authorization in the presence of the approved Witnessing Authority (Access to Courts Representative).
2. The Witnessing Authority will identify the inmate by ID card or records and, upon verification, witnesses the inmate's signature by signing the Records Release Authorization, which Witnessing Authority will maintain.
3. The Witnessing Authority will print a copy of the inmate's "TFBA" computer screen, certify it, and retain a duplicate copy for their records.
4. The inmate is required to have an addressed, stamped envelope prepared for mailing. The Witnessing Authority will place a copy of the certified "TFBA" printout in the addressed, stamped envelope, the envelope will be sealed and placed in the outgoing mail.



CSINIB02/CINIB02 TEXAS DEPARTMENT OF CRIMINAL JUSTICE 10/12/22  
1MV2/GR00081 IN-FORMA-PAUPERIS DATA 10:02:55  
TDCJ#: 02185811 SID#: 04709569 LOCATION: STILES INDIGENT DTE: 09/01/22  
NAME: CHOYCE, ARGUSTUS CHARLES BEGINNING PERIOD: 04/01/22  
PREVIOUS TDCJ NUMBERS: 00661527 01015007 01401030 01762339  
CURRENT BAL: 2.46 TOT HOLD AMT: 0.00 3MTH TOT DEP: 40.00  
6MTH DEP: 135.00 6MTH AVG BAL: 275.93 6MTH AVG DEP: 22.50  
MONTH HIGHEST BALANCE TOTAL DEPOSITS MONTH HIGHEST BALANCE TOTAL DEPOSITS  
09/22 17.61 0.00 06/22 479.48 0.00  
08/22 165.81 0.00 05/22 499.48 0.00  
07/22 300.98 40.00 04/22 594.93 95.00

STATE OF TEXAS COUNTY OF Jefferson  
ON THIS THE 12th DAY OF October 2022 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: \_\_\_\_\_

*Anquanita Trimble*  
  
Anquanita R. Trimble  
ID# 133452299  
Notary Public, State of Texas  
My Commission Expires  
11/18/2025  
Notary Without Bond



No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ARGUSTUS CHARLES CHOYCE, pro se - PETITIONER

VS.

BOBBY LUMPKIN, DIRECTOR, TDCS-CID - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ARGUSTUS CHARLES CHOYCE, pro se  
3060 FM 3541  
BEAUMONT, TEXAS 77705

## QUESTIONS PRESENTED

- 1) IS the officer's determination ALONE SUFFICIENT to make the Fourth Amendment requirement for probable cause/warrant?
- 2) At pre-trial when petitioner made timely objection to counsel being ineffective and asked for his choice of counsel, was the denial by the judge a violation of his Sixth Amendment?
- 3) When the charge, the degree, and the enhancements changes was made by the state to the Grand Jury's indictment, is that a lack of subject matter jurisdiction or void judgment a Fourteenth Amendment violation?

# List of Parties

## PETITIONER

ARGUSTUS CHARLES CHOYCE

represented by ARGUSTUS CHARLES CHOYCE

2185811

Stiles Unit

3060 FM 3514

BEAD MONT, TX 77705

Pro Se

v.

## RESPONDENT

BOBBY LUMPKIN

represented by EDWARD L. MARSHALL  
Office of the Attorney General  
Administrative Law Division

P.O. Box 12548

Capitol Station

Austin, TX 78711

512-936-1400

Jessica M. Alandjlovich  
Assistant Attorney General

P.O. Box 12548

Capitol Station

Austin, TX 78711

512-936-1400

## RELATED CASES

State v. CHOYCE, No. F-9364282-NT, 283 RD Judicial District Court of Dallas County, TEXAS. Judgment March 9, 1995

State v. CHOYCE, No. F-9949606-WU, 291st Judicial District Court of Dallas County, TEXAS. Judgment August 4, 2000

CHOYCE v. STATE, No. 05-00-01322-CR, Court of Appeals Fifth District of TEXAS at Dallas. Judgment January 25, 2002

State v. CHOYCE, No. MA-0670222-H, County Criminal Court #7 of Dallas County, TEXAS. Judgment July 5, 2006

State v. CHOYCE, No. F-0555584-MP, 203 RD Judicial District Court of Dallas County, TEXAS. Judgment October 20, 2006

State v. CHOYCE, No. MA-0955416-N, County Criminal Court #11 of Dallas County, TEXAS. Judgment May 5, 2009

State v. CHOYCE, No. F-1058808-Q, 204 Judicial District Court of Dallas County, TEXAS. Judgment January 10, 2011

State v. CHOYCE, No. F-1475608-Y, Criminal District Court #7 of Dallas County, TEXAS. Judgment June 12, 2015

State v. CHOYCE, No. CR-02606, Sixth Judicial District Court of Red River County, TEXAS. Arraignment hearing, August 14, 2017

State v. CHOYCE, No. CR-02606, Sixth Judicial District Court of Red River County, TEXAS. Pretrial hearing, September 11, 2017

State v. CHOYCE, No. CR-02606, Sixth Judicial District Court of Red River County, TEXAS. Pretrial hearing, October 11, 2017

State v. CHOYCE, No. CR-02606, Sixth Judicial District Court of Red River County, TEXAS. Voir dire, January 9, 2018

State v. CHOYCE, No. CR-02606, Sixth Judicial District Court of Red River County, TEXAS. Voir dire, Statement of facts, February 13, 2018

State v. CHOYCE, No. CR-02606, Sixth Judicial District Court of Red River County, TEXAS. Statement of facts. Judgment February 14, 2018

CHOYCE V. STATE, No. 06-18-00047-CR, Court of Appeals Sixth Appellate District of TEXAS at TEXARKANA. Judgment September 19, 2018

CHOYCE V. STATE, No. 06-18-00047-CR; PD-1145-18, Court of Criminal Appeals of TEXAS. Judgment November 21, 2018

EX PARTE CHOYCE, No. CR-02606-HC-1, Sixth Judicial District Court of Red River County, TEXAS. Judgment March 13, 2019

EX PARTE CHOYCE, No. CR-02606-HC-1; WR-89,777-01, Court of Criminal Appeals of TEXAS. Judgment May 8, 2019

CHOYCE V. DIRECTOR, TDCJ-CID, No. 5:19-CV-00102, United States District Court for the Eastern District of TEXAS, TEXARKANA Division. Judgment November 20, 2020.

CHOYCE V. DIRECTOR, TDCJ-CID, No. 5:19-CV-00102, United States District Court for the Eastern District of TEXAS, TEXARKANA Division. Judgment May 25, 2021

CHOYCE V. DIRECTOR, TDCJ-CID, No. 5:19-CV-00102, United States District Court for the Eastern District of TEXAS, TEXARKANA Division. Judgment January 28, 2022

CHOYCE V. DIRECTOR, TDCJ-CID, No. 21-40450, United States Court of Appeals for the Fifth Circuit. Judgment May 13, 2022

CHOYCE V. DIRECTOR, TDCJ-CID, No. 21-40450, United States Court of Appeals for the Fifth Circuit. Judgment July 14, 2022

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

PETITIONER respectfully prays that a writ of certiorari issue to review the judgment below

OPINIONS BELOW

Federal courts:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is unpublished.

The opinion of the United States district court appears at Appendix "B" to the petition and is unpublished.

## JURISDICTION

Federal courts:

The date the United States Court of Appeals decided my case was May 13, 2022.

A timely petition for rehearing was denied by the United States Courts of Appeals on July 14, 2022, a copy of the order denying rehearing appears at Appendix "D"

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### ARTICLE IV

THE right of the people to be secure in their person, houses, papers, and effects, against UNREASONABLE SEARCHES and SEIZURES, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

### ARTICLE V

NO person shall be held to answer for a capital or otherwise infamous crime, UNLESS ON a presentment or indictment of a Grand Jury, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, or IN THE MILITIA, WHEN IN SERVICE IN TIME OF WAR or public danger; nor shall any person be subject for the SAME OFFENSE to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

### ARTICLE VI

IN all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

### ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

## STATEMENT OF THE CASE

This is a civil action brought by ARGUSTUS CHARLES CHOYCE, petitioner in a federal habeas corpus pursuant, to 28 U.S.C. § 2254 in the U.S. Court of Appeals for the Fifth Circuit on grounds (1) Fourth Amendment claim of arrest without probable cause/warrant, no timely judicial determination by a neutral magistrate to establish probable cause for significant pre-trial restraint of his liberty. (2) Sixth Amendment claim of ineffective assistance of counsel, at pre-trial petitioner was denied choice of counsel, to continue with ineffective appointed counsel by court. (3) Fourteenth Amendment claim of Trial court lack subject matter jurisdiction, the petitioner was convicted of a charge the grand jury NEVER indicted him on. The "DENIED" order on May 25, 2021 for the U.S. District Court for the Eastern District of TEXAS, TEXARKANA Division was signed by the Honorable Judge Robert W. Schroeder III. Bobby Lumpkin, Director, TDCS-CID is respondent in the U.S. Court of Appeals for the Fifth Circuit. The "denied" order for petitioner's motion for COA was signed on May 13, 2022, by the Honorable Judge Andrew S. Oldham for Court of Appeals for the Fifth Circuit. The court ruling is ERRED, the decision conflict with the decision of another U.S. Court of Appeals on the same important matter; has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, for these reasons petitioner seek to call for an exercise of this Court's supervisory power review of U.S. Court of Appeals judgment to whom jurisdiction was invoked under 28 U.S.C. § 2254 (a). On July 22, petitioner filed in the U.S. Court of Appeals for the Fifth Circuit a motion for reconsideration for EN BANC rehearing. 28 U.S.C. § 1254 (1)

## REASONS for Granting Petition

The United States Supreme Court has governing power to entertain an application for a writ of habeas corpus under 28 U.S.C. § 2254 in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. Petitioner contends the Fifth Circuit, Court of Appeals order was wrong in the Stone bar ruling to petitioner's Fourth Amendment constitutional claim of arrest without probable cause/warrant. (SEE App. "A"). (1) IN an opinion by POWELL, J., it was held, "that under the Fourth Amendment, a person arrested without a warrant and charged by information with a state offense was entitled to a timely judicial determination by a neutral magistrate of probable cause for significant pretrial restraint of his liberty, the prosecutor's decision to file an information not alone satisfying the Fourth Amendment's requirements." GERSTEIN v. PUGH, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54. (1975). (CR-101, pg. 95, Docket sheet). The Amendment standing alone guaranteed "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint" SEE GERSTEIN, 420 U.S. at 125. Accordingly, those detained prior to that determination and prior to trial without such a finding could appeal to "the Fourth Amendment's protection against unbounded invasions of liberty." Id. at 112, 95 S.Ct. 854, 43 L.Ed.2d 54; SEE id. at 114, 95 S.Ct. 854, 43 L.Ed.2d 54. That being the reason for Fourth Amendment claim of arrest without probable cause/warrant, only makes way to the Fourteenth Amendment violation of due process clause. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Phillips v. City of Dallas, 781 F.3d 772, 776 (5th Cir. 2015) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)). "Legal conclusions, however, are not entitled to an

assumption of truth and must be supported by factual allegations." Iqbal, 556 U.S. at 678-79. The Fifth Circuit, Court of Appeals ruled a STONE bar, "where a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim a state prisoner may not be granted relief." IN AN OPINION BY POWELL, J., STONE V. POWELL, 428 U.S. 465 (1976). THERE IS NO PRESUMPTION OF CORRECTNESS UNDER § 2254 WHEN STATE COURT'S FACTS "NOT AT ALL SUPPORTED BY EVIDENTIARY RECORD." MILLER-EL V. DIETRKE, 545 U.S. 231, 240-265 (2005). ON TRIAL 2-13-2018 STATE PROSECUTOR OBJECTED TO DEFENSE COUNSEL'S OFFER OF PROOF TO ADMIT POLICE OFFENSE REPORT INTO EVIDENCE. (Tr. 2 of 4, pg. 199, 12-pg. 200, 1), (SEE App. "E"); (App. "F"); (App. "G"); and (App. "H"). UNDER FED. R. EVIDENCE 103 AN OFFER OF PROOF PRESERVE A CLAIM OF ERROR FOR APPEAL. UNDER PRE-"AEDPA" STANDARDS, A FEDERAL EVIDENTIARY HEARING IS REQUIRED IF (1) A HABEAS PETITIONER ALLEGES FACTS WHICH, IF PROVED, WOULD ENTITLED HIM TO RELIEF (2) THE STATE COURT FOR REASON BEYOND THE CONTROL OF PETITIONER'S - NEVER CONSIDERED THE CLAIM IN A FULL AND FAIR HEARING. "TO PRESERVE A COMPLAINT FOR APPELLATE REVIEW, THE RECORD MUST SHOW THAT (1) THE COMPLAINT WAS MADE TO THE TRIAL COURT BY OBJECTION. SEE TEX. R. APP. P. 33.1 (a); Mosley V. STATE, 983 S.W. 2d 249, 265 (TEX. CRIM. APP. 1998) (OP. ON REH'G), CERT DENIED, 526 U.S. 1070, 119 S. CT. 1466, 143 L. ED 2d 550 (1999). FURTHER, (2) "A DEFENDANT'S FOURTH AMENDMENT RIGHTS ARE VIOLATED IF (1) THE AFFIANT, IN SUPPORT OF THE WARRANT, INCLUDES 'A FALSE STATEMENT KNOWINGLY AND INTENTIONALLY, OR WITH RECKLESS DISREGARD FOR THE TRUTH', AND (2) THE ALLEGEDLY FALSE STATEMENT IS NECESSARY TO THE FINDING OF PROBABLE CAUSE." WINTREY V. ROGERS, 901 F.3d 483, 494 (5th Cir. 2018). ON PETITION FOR REHEARING (QUOTING FRANKS V. DELAWARE, 438, U.S. 154, 155-56, 165, 98 S. CT. 2674, 57 L. ED 2d 667 (1978). TO MAKE THE REQUIRED SHOWING UNDER NUMBER (1) OF FRANKS, (SEE App. "E"), and (App. "F"). TO MAKE THE REQUIRED SHOWING UNDER NUMBER (2) OF FRANKS (SEE App. "F"); (App. "G"); and (App. "I"). IF THE COURT ACCEPT

the showings as true and consider (App. "H") to Fourth Amendment Constitution violation, the Fifth Circuit, Court of Appeals has to give petitioner a ruling and prevailing standard on § 2254 of harm analysis, any other analysis is in conflict with Federal standard. "The U.S. Supreme Court declared that an error is harmless for claims raised under § 2254 unless there was "substantial and injurious effects" on the outcome of the proceedings". In Brecht v. Abrahamson, 507 U.S. 619, 631, 113 S.Ct. 1710, 123 L.Ed. 2d 353 (1993). The denied probable cause determination caused violations under Fourteenth Amendment of due process that allowed petitioner to suffer a great amount of prejudice harm from the court to be put on trial, found guilty, and be sentence to life. These are only a few of the ways petitioner's sufferings of "substantial and injurious effects" have resulted from the Fourth and Fourteenth Amendment violation which contributed to the outcome of the trial proceedings. "Where the state court mistakenly fails to consider a habeas claim that has been properly raised, the state court has not "adjudicated" that claim as required by "AEDPA", and therefore the state denial is entitled to no deference at all on federal habeas corpus". Mercader v. Cain, 179 F.3d 271, 274-75 (5th Cir. 1999). "In general if a convicted state criminal defendant can show a federal habeas court that his conviction rest upon a violation of the federal Constitution, he may well obtain a writ of habeas corpus that requires a new trial, a new sentence, or release". Preiser v. Rodriguez, 411 U.S. 475, 484-485, 93 S.Ct. 1827, 36 L.Ed 2d 439 (1973).

The importance of having the Supreme Court decide the matter of this case give national assurance that no citizen suffers an unconstitutional loss of liberty and puts hope and trust in our justice system to value every citizen's constitutional rights.



## II

PETITIONER CONTENDS THE FIFTH CIRCUIT, COURT OF APPEALS procedurally default to his Sixth Amendment constitution claim of ineffective assistance of counsel is ERRED. (SEE App. "A"). (1) ON 10-11-2017 at pre-trial petitioner made objection to the court about the ineffective assistance counsel provided. (Pr. Tr. - 4 of 8, pg. 4, 25 - pg. 5, 9). "To preserve a complaint for appellate review, the record must show that (1) the complaint was made to the trial court by objection." SEE TEX. R. App. P. 33.1(a); Mosley v. State, 983 S.W. 2d 249, 265 (Tex. Crim. App. 1998) (op. on reh'g), cert denied, 526 U.S. 1070, 119 S.Ct. 1466, 143 L.Ed 2d 550 (1999). The judge replied to petitioner's objection to ineffective assistance was, counsel would continue to represent him pending further orders of the court. (Pr. Tr. - 4 of 8, pg. 7, 19-22). "IN BELL [122 S.Ct. 1851-52] the Supreme Court identified "critical stages" by looking to previous cases in which it had so characterized various stages of criminal proceedings. By this reasoning, the pretrial period is indeed a critical stage, the denial of counsel during which supports a Cronic analysis". (quoted in Mitchell v. Mason, 325 F.3d 732 CCA 6 2003). The objection to the judge at pretrial shows the procedurally default is in conflict with other United States court of appeals on the same important matter and the decision ERONEOUS to the petitioner's Sixth Amendment constitution claim when it was properly raised in the lower courts. "WHERE the state court mistakenly fails to consider a habeas claim that has been properly raised, the state court has not "adjudicated" that claim as required by "AEDPA", and therefore the state denial is entitled to NO deference at all on federal habeas corpus". MERCADIEL V. CRAIN, 179 F.3d 271, 274-75 (5th Cir. 1999). Petitioner told the judge about the arguments that he and the counsel had, all to let judge know he wanted to get his choice of counsel. (Pr. Tr. - 4 of 8, pg. 9, 14 - pg. 10, 20). "WHERE

CRIME TO UNDERGO a trial with the assistance of an attorney with whom he has become embroiled in an irreconcilable conflict it deprives him of the effective assistance of any counsel whatsoever." DANIELS V. WOODFORD, 428 F.3d 1181 (CA 2005) (quoting BROWN V. CRAVEN, 424 F.2d 1166, 1170 (1970)). "WHERE the right to be assisted by counsel of one's choice is wrongly denied, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation, since the right to select counsel of one's choice is not deprived from the Sixth Amendment's purpose of ensuring a fair trial, this deprivation of the right is complete when the defendant is erroneously prevented from being represented by the lawyer he wants." U.S. V. GONZALEZ-LOPEZ, 126 S.Ct. 2557. Justice Scalia, held that: "trial courts erroneous deprivation of defendant's Sixth Amendment right to choice of counsel entitled him to reversal of his conviction, as error qualified as a 'structural error' not subject to review for harmlessness." IN GONZALEZ-LOPEZ. "A pleading states a claim for relief when it contains a 'short and plain statement... showing that the pleader is entitled to relief...' Fed. R. Civ. P. 8(a)(2). Now part (2) to petitioner's argument is, since facts has been presented to support no procedurally default exist, truth for claim to prevail for relief, the right harm analysis has to be applied to the Sixth Amendment constitutional claim of ineffective assistance of counsel." THE U.S. SUPREME COURT declared that an error is harmless for claims raised under § 2254 unless there was "substantial and injurious effects" on the outcome of the proceedings." IN BRECHT V. ABRAHAMSON, 507 U.S. 619, 631, 113 S.Ct. 1710, 123 L.Ed 2d 353 (1993). The Brecht harm analysis is standard on § 2254, to procedurally default petitioner's Sixth Amendment constitutional claim shows the Fifth Circuit, Court of appeals has departed from the accepted and

Constitutional claim shows the Fifth Circuit, Court of Appeals has departed from the accepted and usual course of judicial proceedings or sanctioned such departure by a lower court for these reasons this specific task requires the reviewing court experience, expertise, and consideration in this matter of a citizen's constitutional rights being violated, a miscarriage of justice. Under pre-"AEDPA" standards, a federal evidentiary hearing is required if (1) a habeas petitioner alleges facts which, if proved, would entitle him to relief (2) the state court for reason beyond the control of petitioner's - never considered the claims in a fair and full hearing. "In general, if a convicted state criminal defendant can show a federal habeas court that his conviction rest upon a violation of the federal constitution, he may well obtain a writ of habeas corpus that requires a new trial, a new sentence, or release." PREISER V. RODRIGUEZ, 411 U.S. 475, 484-485, 93 S.Ct. 1827, 36 L.Ed 2d 439 (1973).

### III

Petitioner contends Fifth Circuit, Court of Appeals procedurally default to his Fourteenth Amendment claim Trial court lacked subject-matter jurisdiction is not according with the usual course of judicial proceedings. has sanctioned the departure of the lower court. (App. "A"). The decision not only conflicts with the First Circuit, Second Circuit, and Eleventh Circuit courts it also conflicts with it's own court of the Fifth Circuit. (1) TEX. PENAL CODE 22.01 (b)(2) ENHANCES THE OFFENSE OF A CLASS A MISDEMEANOR TO A THIRD DEGREE FELONY "IF" THE OFFENSE IS COMMITTED

against a person whose relationship to or association with the defendant is described by TEX. Family. CODE ANN §§ 71.0021 (dating relationship), 71.003 (family member), or 71.005 (member of same household). On 6-10-2017 Michelle Harris, petitioner's co-worker wrote a statement that alleged she had been assaulted, that statement has her address on it, Officer Caleb Sleeper signed that statement as a witness. (Tr.- 4 of 4, pg. 15, exhibit), (App "E"). After talking to Harris and without further investigation, Officer Sleeper, made the decision to try to get a warrant for assault family violence impeding breath with no medical treatment or any kind of medical record. (Tr.- 2 of 4, pg. 193, 11-24), (Tr.- 2 of 4, pg. 202, 6-23), (App "F"), (App "G"), (App "H").

Petitioner was denied the judicial determination required according to GERSTEIN V. PUGH, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed 2d 54. (CCR-1 of 1, pg. 95, Docket sheet). "Fed. R. Civ. P. 60 (b)(4) relieves a party of a void judgment not because the judgment is wrong, but rather because the judgment is based either on a certain type of jurisdictional defect or on a violation of due process." Hoult v. Hoult, 57 F.3d 1 at 6 (CA 1 1995). UNITED STUDENT AIDE FUNDS, INC., v. ESPINOSA, 559 U.S. \_\_\_, 130 S. Ct. 1367, 1377 (2010). "In fact, it has been oft-stated that, for all intent and purpose, a motion to vacate a default judgment as void "may be brought at any time." BELLER & KEILER, 120 F.3d 21, 24 (2nd Cir. 1997). The court never gained subject matter jurisdiction required by TEX. Family. CODE §§ 71.0021, 71.003, or 71.005 to put petitioner on trial for felony assault. (Tr.- 2 of 4, pg. 229, 6- pg. 231, 22), (Tr.- 3 of 4, pg. 5, 10- pg. 6, 19), (Tr.- 3 of 4, pg. 19, 13-16), CCR-1 of 1, pg. 57-59). "In this regard, an absence of jurisdiction in the convicting court is a basis for federal habeas corpus relief cognizable under the due process

CLAUSE." LOWERY V. ESTELLE, 696 F.2d 333, 337 (5th Cir. 1983) (quoted in EVANS V. CAIN, 577 F.3d 620 (CA 5 2009)). (2) PETITIONER WAS INDICTED JULY 20, 2017 OF ASSAULT FAMILY VIOLENCE BODILY INJURY IMPEDING BREATH (CR-1d1, pg. 5-6), (Tr.-2d4, pg. 126, 14-pg. 127, 17), (App. "I"). THE COURT "granted" THE STATES SECOND CHANCE TO AMEND THE GRAND JURY'S INDICTMENT, IN THAT AMENDED INDICTMENT THE STATE MADE CHANGES IN VIOLATION TO PETITIONER'S FOURTH AND FOURTEENTH CONSTITUTIONS, THE CHARGED OFFENSE, THE DEGREE, AND THE PRIOR CHARGE DESCRIBED BY TEX. FAMILY CODE 71.0021 WHICH ENHANCES A MISDEMEANOR TO A THIRD DEGREE FELONY, IT'S CLEAR EVIDENCE OF A CONSTITUTIONAL VIOLATION BECAUSE, THE MOTION TO AMEND, THE ORDER "granted" BY JUDGE, AND THE AMENDED INDICTMENT ARE ALL DATED FOR THE SAME DATE OF JANUARY 9, 2018. (App. "J"), (App. "K"), (App. "L"), (App. "I"). "FEDERAL COURTS CONSIDERING RULE 60(b)(4) MOTION THAT ASSERT A JUDGMENT IS VOID BECAUSE OF A JURISDICTIONAL DEFECT GENERALLY HAVE RESERVED RELIEF ONLY FOR THE EXCEPTIONAL CASES IN WHICH THE COURT THAT RENDERED JUDGMENT LACKED EVEN AN "ARGUABLE BASIS" FOR JURISDICTION". NEHRIZER V. BAKER, 793 F.2d 58, 65 (CA 2 1986). IN THESE WAYS PETITIONER PRESENT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO SHOW WHY AND HOW THE FIFTH CIRCUIT, COURT OF APPEALS JUDGMENT IS WRONG. IT'S THE REASON IT IS NECESSARY FOR THE REVIEWING OF THE U.S. SUPREME COURT OVER THESE CONSTITUTIONAL VIOLATIONS. UNDER PRE-"AEDPA" STANDARDS, A FEDERAL EVIDENTIARY HEARING IS REQUIRED IF (1) A HABEAS PETITIONER ALLEGES FACTS WHICH, IF PROVED, WOULD ENTITLED HIM TO RELIEF (2) THE STATE COURT FOR REASON BEYOND THE CONTROL OF PETITIONER'S - NEVER CONSIDERED THE CLAIMS IN A FULL AND FAIR HEARING. "IN GENERAL, IF A CONVICTED STATE CRIMINAL DEFENDANT CAN SHOW A FEDERAL HABEAS

court that his conviction rest upon a violation of the federal constitution, he may well obtain a writ of habeas corpus that requires a new trial, a new sentence, or release." PREISER V. RODRIGUEZ, 411 U.S. 475, 484-485, 93 S.Ct. 1827, 36 L.Ed 2d 439 (1973). The court convicted petitioner of a second degree felony, after being enhanced to a first degree felony and then sentenced to 50 years the judgment was amended to show a third degree with no sentence to fit the 2 to 10 years of the third degree felony conviction. (App. "M"), (App. "N"), (App. "O"), (App. "P"). To prevail the Fifth Circuit, Court of Appeals should use the harm analysis standard on § 2254. The prejudice harm petitioner was caused by the court to be charged, put on trial, and convicted of a second degree felony, which was enhance to 50 years, caused petitioner "substantial and injurious effect" on the outcome of the proceedings." The U.S. Supreme Court declared that an error is harmless for claims raised under § 2254 unless there was "substantial and injurious effect" on the outcome of the proceedings." Brecht v. Abrahamson, 507 U.S. 619, 631, 113 S.Ct. 1710, 123 L.Ed 2d 353 (1993).

### Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Augustus Charles Choyce

October 12, 2022  
dated

Appendix

**FILED**

May 13, 2022

Lyle W. Cayce  
Clerk

**United States Court of Appeals  
for the Fifth Circuit**

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No. 21-40450

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ARGUSTUS CHARLES CHOYCE,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,  
Correctional Institutions Division,*

*Respondent—Appellee.*

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Application for Certificate of Appealability from the  
United States District Court for the Eastern District of Texas  
USDC No. 5:19-CV-102

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**ORDER:**

Argustus Charles Choyce, Texas prisoner# 2185811, moves for a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2254 petition challenging his conviction for assault causing bodily injury by impeding breath. The district court determined that Choyce's claims of ineffective assistance of counsel and lack of trial court jurisdiction were procedurally defaulted and that his Fourth Amendment claim was precluded from review by *Stone v. Powell*, 428 U.S. 465 (1976).

Choyce's COA motion and brief address only the merits of his constitutional claims and do not challenge the basis of the district court's

*"Appendix A"*



No. 21-40450

disposition. He thus fails to make the requisite showing. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The motion for a COA is accordingly DENIED.



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ANDREW S. OLDHAM  
*United States Circuit Judge*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

ARGUSTUS CHARLES CHOYCE,

Plaintiff,

v.

DIRECTOR, TDCJ-CID,

Defendant.

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CIVIL ACTION NO. 5:19-CV-00102-RWS

**ORDER**

Petitioner Argustus Charles Choyce, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court ordered that this matter be referred to the Honorable Caroline Craven, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge has submitted a Report and Recommendation recommending that the petition be denied. Docket No. 18.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. The petitioner filed objections to the Report and Recommendation. Docket No. 21.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* Fed. R. Civ. P. 72(b). After careful consideration, the Court concludes the objections are without merit.

The petitioner contends that the magistrate judge should have considered the merits of his claim that he was arrested without probable cause, in violation of the Fourth Amendment. The

"Appendix B"

record reflects that the petitioner was arrested for public intoxication and creating a disturbance. While he was being held at the jail on those charges, the petitioner was served with a warrant for his arrest for the family violence assault at issue in this petition. /The petitioner challenges the validity of the warrant because he claims that he has not seen an affidavit supporting the warrant and there was no forensic investigation.} The magistrate judge correctly concluded that the petitioner cannot litigate this claim on federal habeas review because the State of Texas offers criminal defendants the opportunity to litigate Fourth Amendment claims in the trial court and on appeal. *Stone v. Powell*, 428 U.S. 465 (1976); *Register v. Thaler*, 681 F.3d 623, 628 (5th Cir. 2012). Federal habeas review of the Fourth Amendment claim is barred, even though the petitioner did not avail himself of those opportunities. *Janecka v. Cockrell*, 301 F.3d 316, 320 (5th Cir. 2002).

The petitioner contends that his attorney provided ineffective assistance of counsel by failing to object to the jury charge. The petitioner also alleges that the trial court lacked subject matter jurisdiction because the indictment charged him with “assault family violence bodily injury impeding breath,” but the trial judge told the jury that the petitioner was charged with “assault causes bodily injury impeding breath.” The magistrate found that these claims were unexhausted because the petitioner failed to raise them in the state courts, and that the petitioner would be procedurally barred from raising them in a subsequent state habeas application. *Nelson v. Davis*, 952 F.3d 651, 662 (5th Cir. 2020); TEX. CODE CRIM. PROC. art. 11.07 § 4. Because the petitioner procedurally defaulted his federal claims by failing to present them in state court in a procedurally correct manner, the petitioner is barred from raising the claims in a federal habeas petitioner unless he shows cause for the default and actual prejudice, or that a miscarriage of justice will occur if the federal courts do not consider the claim. *Sawyer v. Whitley*, 505 U.S. 333, 338 (1992); *Nelson*,

952 F.3d at 662. The petitioner has not shown cause for the procedural default or prejudice. Nor has he shown that a miscarriage of justice will occur if the merits of the claims are not reviewed in federal court. In addition, the petitioner offers no legal support for his argument that a criminal defendant can challenge the state court's jurisdiction at any time. As a result, the claims of ineffective assistance and lack of subject matter jurisdiction are barred from federal review.

Additionally, in this case, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).

The petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason or that a procedural ruling was incorrect. The factual and legal questions advanced by the petitioner are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. The petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

Accordingly, the petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. The petition for writ of habeas corpus in the above-captioned matter is thus **DENIED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation. A certificate of appealability will not be issued.

**SIGNED this 25th day of May, 2021.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

ARGUSTUS CHARLES CHOYCE,

Plaintiff,

v.

DIRECTOR, TDCJ-CID,

Defendant.

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CIVIL ACTION NO. 5:19-CV-00102-RWS

**ORDER**

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Pursuant to the Court's order dismissing this case, the Court hereby enters Final Judgment.

Accordingly, it is

**ORDERED** that this petition for writ of habeas corpus is **DENIED**.

All motions not previously ruled on are **DENIED**.

The Clerk of the Court is directed to close this case.

**SIGNED** this 25th day of May, 2021.



ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

ARGUSTUS CHARLES CHOYCE

§

VS.

§

CIVIL ACTION NO. 5:19-CV-102

DIRECTOR, TDCJ-CID

§

REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Argustus Charles Choyce, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

The petitioner is in custody pursuant to a judgment entered in the 6th District Court of Red River County, Texas. A jury found the petitioner guilty of assault. During the sentencing phase, the petitioner pleaded true to enhancement paragraphs in the indictment alleging he had two prior felony convictions. On February 14, 2018, the petitioner was sentenced to fifty years of imprisonment. On direct appeal, the Court of Appeals found that the judgment erroneously reflected that the petitioner had been convicted of a second degree felony and ordered the trial court to modify the judgment to reflect that the petitioner was convicted of a third degree felony offense. *Choyce v. State*, No. 06-18-00047-CR, 2018 WL 4472284 (Tex. App.—Texarkana 2018, pet. ref'd). The judgment was affirmed

"Appendix C"

as modified. The Texas Court of Criminal Appeals denied the petitioner's petition for discretionary review.

Petitioner filed a state application for habeas relief, which the Texas Court of Criminal Appeals denied without written order on May 8, 2019.

#### The Petition

The petitioner contends that he was arrested without probable cause, in violation of the Fourth Amendment to the United States Constitution. The petitioner alleges his attorney provided ineffective assistance of counsel by failing to object to the jury charge. Finally, the petitioner contends the trial court lacked subject matter jurisdiction.

#### Standard of Review

Title 28 U.S.C. § 2254 authorizes the District Court to entertain a petition for writ of habeas corpus on behalf of a person in custody pursuant to a state court judgment if the prisoner is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). The Court may not grant relief on any claim that was adjudicated in state court proceedings unless the adjudication: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States;<sup>1</sup> or (2) resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court. 28 U.S.C. § 2254(d). A decision is contrary to clearly established federal law if the state court reaches a conclusion opposite to a decision reached by the Supreme Court on a question of law, or if the state court decides a case differently than the Supreme

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<sup>1</sup> In making this determination, federal courts may consider only the record before the state court that adjudicated the claim on the merits. *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).



Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). An application of clearly established federal law is unreasonable if the state court identifies the correct governing legal principle, but unreasonably applies that principle to the facts. *Id.* State court decisions must be given the benefit of the doubt. *Renico v. Lett*, 559 U.S. 766, 773 (2010).

The question for federal habeas review is not whether the state court decision was incorrect, but whether it was unreasonable, which is a substantially higher threshold. *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). Federal courts look to the “last reasoned opinion” as the state court’s “decision.” *Salts v. Epps*, 676 F.3d 468, 479 (5th Cir. 2012). If a higher state court offered different grounds for its ruling than a lower court, then only the higher court’s decision is reviewed. *Id.*

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“Where a state court’s decision is unaccompanied by an explanation, the habeas petitioner’s burden still must be met by showing there was no reasonable basis for the state court to deny relief.”

*Harrington v. Richter*, 526 U.S. 86, 98 (2011); *see also Johnson v. Williams*, 568 U.S. 289, 293

(2013) (holding there is a rebuttable presumption that the federal claim was adjudicated on the merits when the state court addresses some claims, but not others, in its opinion).

This Court must accept as correct any factual determinations made by the state courts unless the petitioner rebuts the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e). The presumption of correctness applies to both implicit and explicit factual findings. *Young v. Dretke*, 356 F.3d 616, 629 (5th Cir. 2004); *Valdez v. Cockrell*, 274 F.3d 941, 948 n. 11 (5th Cir. 2001) (“The presumption of correctness not only applies to explicit findings of fact, but it also applies to those unarticulated findings which are necessary to the state court’s conclusions of mixed law and fact.”). Deference to the factual findings of a state court is not dependent upon the quality of the state court’s evidentiary hearing. *See Valdez*, 274 F.3d at 951 (holding that “a full and fair

hearing is not a precondition to according § 2254(e)(1)'s presumption of correctness to state habeas court findings of fact nor to applying § 2254(d)'s standards of review.”).

### Analysis

#### *I. Unlawful Arrest*

The petitioner contends he was arrested without probable cause, in violation of the Fourth Amendment. Federal courts may not review Fourth Amendment claims on habeas review where the State has provided an opportunity for full and fair litigation of the claims. *Stone v. Powell*, 428 U.S. 465 (1976). As long as the State provides the processes whereby a defendant can obtain full and fair litigation of a Fourth Amendment claim, *Stone* bars federal habeas review of that claim regardless of whether the defendant employs those processes. *Janecka v. Cockrell*, 301 F.3d 316, 320 (5th Cir. 2002); *Carver v. Alabama*, 577 F.2d 1188, 1192 (5th Cir. 1978).

In this case, the petitioner had the opportunity to fully and fairly litigate his Fourth Amendment claim in state court. Therefore, the claim is barred from federal habeas review.

#### *II. Procedural Bar*

Respondent argues that the petitioner's claims of ineffective assistance of counsel and lack of subject matter jurisdiction are unexhausted and, thus, are procedurally barred from federal review.

Federal habeas review of a claim is procedurally barred if the last state court to consider the claim expressly and unambiguously denied relief based on a state procedural default. *Meanes v. Johnson*, 138 F.3d 1007, 1010 (5th Cir. 1998). Federal review is also barred:

if the petitioner failed to exhaust state remedies and the court to which the petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred. In such a case there is a procedural

The petitioner has not shown cause for the procedural default because the unexhausted claims could have been raised in his state habeas application. Because the petitioner failed to show cause for the procedural default, the Court need not consider whether he was prejudiced. *Meanes*, 138 F.3d at 1011. Further, the petitioner has not demonstrated that a miscarriage of justice will occur if the federal court does not consider the merits of his claims. Therefore, the petitioner's claims of ineffective assistance of counsel and lack of subject matter jurisdiction are procedurally barred from federal review.

#### Recommendation

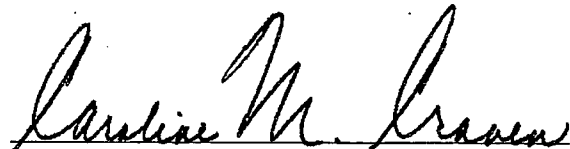
For the foregoing reasons, this petition for writ of habeas corpus should be denied.

#### Objections

Within fourteen days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of the factual findings and legal conclusions accepted by the district court, except on grounds of plain error. *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

**SIGNED this 20th day of November, 2020.**

  
CAROLINE M. CRAVEN  
UNITED STATES MAGISTRATE JUDGE

**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

July 14, 2022

#2185811  
Mr. Argustus Charles Choyce  
CID Stiles Prison  
3060 FM 3514  
Beaumont, TX 77705-0000

No. 21-40450      Choyce v. Lumpkin  
USDC No. 5:19-CV-102

---

Dear Mr. Choyce,

We will take no action on your motion for en banc rehearing. The time for filing a petition for rehearing under **FED. R. APP. P. 40** has expired.

Sincerely,

LYLE W. CAYCE, Clerk

*Shea E. Pertuit*

By:

Shea E. Pertuit, Deputy Clerk  
504-310-7666

cc:

Ms. Jessica Michelle Manojlovich  
Mr. Edward Larry Marshall

*"Appendix D"*

Attachment #1 (statement)

CASE NUMBER:

**CLARKSVILLE POLICE DEPARTMENT**

**VICTIM STATEMENT**

NAME: Nichelle Harris

AGE: 38

ADDRESS: 93CR 1270 Det. 75434

CONTACT #: 682-459-1270

DATE OF BIRTH: 7-16-78

DRIVERS LICENSE: ID 02860443

I REALIZE THAT IT IS A VIOLATION OF THE TEXAS PENAL CODE, SECTION 37.08 FOR ME TO MAKE A FALSE REPORT TO A PEACE OFFICER. THAT MEANS TO REPORT AN OFFENSE KNOWING THAT THE OFFENSE DID NOT OCCUR OR KNOWING THAT I HAVE NO KNOWLEDGE ABOUT THE OFFENSE.

I have been assaulted by Arguste Chayee  
he started to beat me repeatedly around 7:00 to 7:30 AM  
I ran out and left everything my purse with \$420.00

THE ABOVE STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND ACCURATELY DESCRIBES THE EVENTS AS I REMEMBER THEM.

Nichelle Harris

SIGNATURE OF VICTIM

DATE: TIME:

C. S. 206

SIGNATURE OF OFFICER

PAGE 1 OF 1

Appendix E

# Incident Report #1 Continued

Page 3

Clarksville Police Department	Incident Classification <b>Assault Non Agg</b>	attempted <input type="checkbox"/>	Case No. <b>20170625</b>
-------------------------------	---	---------------------------------------	-----------------------------

Dispatch advised me that the on-duty deputy was in Avery, TX on an unrelated call. I advised Dispatch that I would be en route to the pallet factory.

Upon arrival, I made contact with factory manager Cedric Nickerson who advised that the assault victim was in the back seat of an SUV parked in front of the main office.

I made contact with victim Michelle Harris who advised that she had been staying with her boyfriend Argustus Choyce in his apartment at 1108 W. Main St. Apt. #4 in Clarksville and that this morning (06/10/2017) at approx. 07:00-07:30, Choyce began beating her repeatedly and choked her. I observed bruising and redness on Harris' face and neck. Photographs of Harris' injuries were taken as evidence and will be included with this file. I advised Harris that I would need her statement regarding the assault, and she advised she would write a statement. The following statement was written by Michelle Harris on 10/06/2017 : ["I have been assaulted by Arguste Choyce he started to beat me repeatly around 7:00 to 7:30Am I ran out and left everything my purse with \$420.00"]

Harris advised that she had cash in her purse from her paycheck of approx. \$420.00 in her purse, and Choyce took that money from her purse. The driver of the vehicle that Harris was sitting in, Gary Reed, advised that he lives in the same apartment building, in Apt. #2. Reed advised that he was trying to help Harris this morning when he observed Choyce take the money. I asked Reed if he was willing to give a statement about what he witnessed, and he advised yes. The following statement was written by Gary Reed on 06/10/2017 : ["I Gary was trying to help Michelle get her belongings back from Argustus Choice and he had her purse and I seen him take her money out of her purse at least \$400 asked him to give it too me and he said no this is my bail money. So I left when he was putting money in pocket."]

While on scene, Choyce was arrested for Disorderly Conduct and Public Intoxication. See report # 20170624 for details. No further information at this time. EOR.

*< OFFICER'S FALSE STATEMENT*

**CLARKSVILLE POLICE DEPARTMENT****MUNICIPAL COMPLAINT**

STATE OF TEXAS

§

No. 17-0164

RED RIVER COUNTY, TX

§

IN THE MUNICIPAL COURT

CITY OF CLARKSVILLE

§

IN THE CITY OF CLARKSVILLE, TX

**MUNICIPAL COMPLAINT**

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

I, Officer C. Sleeper do solemnly swear that ( Argustus Charles Choyce ) in the City of Clarksville and the State of Texas, on or about the 10<sup>th</sup> day of June, 2017 and before the filing of this complaint, did unlawfully commit: Sec. 22.01. ASSAULT. (a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

AGAINST THE PEACE AND DIGNITY OF THE STATE.

C. Sleeper  
COMPLAINANT

ADDRESS: 1108 W. Main St. Apt. #4 Clarksville, TX 75426D.L. #: TX ID 02368648DOB: 10/30/1974SEX M RACE B HT 5'06" WT 165

SWORN AND SUBSCRIBED BEFORE

ME THIS 10 DAY OF June 2017

Mark W. Whitcomb  
OF THE CITY OF CLARKSVILLE, TEXAS

WARNINGS

"Appendix G"

CLARKSVILLE POLICE DEPARTMENT

PROBABLE CAUSE AFFIDAVIT

the vehicle that Harris was sitting in, Gary Reed, advised that he lives in the same apartment building, in Apt. #2. Reed advised that he was trying to help Harris this morning when he observed Choyce take the money. I asked Reed if he was willing to give a statement about what he witnessed, and he advised yes. The following statement was written by Gary Reed on 06/10/2017 : ["I Gary was trying to help Michelle get her belongings back from Argustus Choice and he had her purse and I seen him take her money out of her purse at least \$400 asked him to give it too me and he said no this is my bail money. So I left when he was putting money in pocket."]

While on scene, Choyce was arrested for Disorderly Conduct and Public Intoxication. See report # 20170624 for details. No further information at this time. EOR.

C. Blay-206  
Affiant

Sworn to and subscribed before me on

day of , 20

☐ Notary Public, in and for the state of TX  
☐ Peace Officer

The foregoing affidavit having been presented and upon consideration of facts and circumstances contained therein, it is hereby determined the cause (exist) / (~~does not exist~~) to authorize the arrest of the above accused for the offense stated above.

Therefore it is accordingly ordered Argustus C. Choyce remain in the custody of the (Clarksville Police Department) / (Red River County Sheriff's Department)

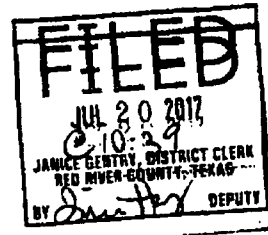
6/10/17  
Date

4:09 PM  
Time

Mark Whitham  
Magistrate, City of Clarksville

"Appendix H"





CAUSE NO.: CRO 2606

THE STATE OF TEXAS

VS.

ARGUSTUS CHARLES CHOYCE

CHARGE

ASSAULT FAMILY VIOLENCE BODILY INJURY IMPEDING BREATH  
TEXAS 22.01  
3RD DEGREE FELONY  
ENHANCED 25-99

A TRUE BILL

CYNTHIA RAMIREZ  
FOREMAN OF THE GRAND JURY

---

RETURNED INTO OPEN COURT BY A QUORUM OF  
THE GRAND JURY, THIS 20TH DAY OF  
JULY, A.D., 2017 AND  
FILED THE SAME DAY.

---

JANICE K. GENTRY, CLERK OF THE DISTRICT COURT OF  
RED RIVER COUNTY, TEXAS

BY *Samuel H. Gentry* DEPUTY

---

NAMES OF WITNESSES:

CALEB SLEEPER

"Appendix I"

# INDICTMENT

DATE: JULY 20, 2017

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

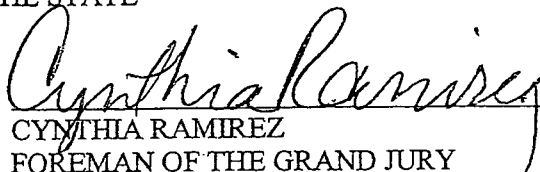
The Grand Jury of Red River County, State of Texas, duly impaneled, sworn, charged, and organized at the JANUARY Term of Court, 2017 A.D. of the 6TH District Court of said county, in said court, at said term, upon their oaths do present that Argustus Charles Choyce, on or about the 10th day of June, 2017, did commit the offense of ASSAULT CAUSES BODILY INJURY IMPEDING BREATH by then and there intentionally, knowingly, and recklessly cause bodily injury to Michelle Harris, hereafter styled the complainant, a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, by intentionally, knowingly, and recklessly impeding the normal breathing or circulation of the blood of the complainant by applying pressure to the throat or neck of the complainant ; and before the commission of the offense, the defendant had previously been convicted of an offense under Chapter 22 of the Texas Penal Code, against a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, to-wit: on the 10<sup>th</sup> day of January, 2012, in the 204<sup>th</sup> Judicial District Court of Dallas County, Texas, in cause number F-1475608-Q.

And it is further presented that, prior to the commission of the charged offense (hereafter styled the primary offense), on the 10<sup>th</sup> day of March, 1995, in cause number F-9364282 in the 283rd Judicial District Court of Dallas County, Texas, the defendant was finally convicted of the felony offense of Possession of a Controlled Substance.

And it is further presented that, prior to the commission of the primary offense, and after the conviction in cause number F-9364282 was final, the defendant committed the felony offense of Unlawful Possession of a Firearm by Felon and was finally convicted on the 4<sup>th</sup> day of August, 2000, in cause number F-9949606 in the 291<sup>st</sup> Judicial District Court of Dallas County, Texas.

The primary offense occurred in Red River County, and is therefore within the jurisdiction of the court in which it is presented.

AGAINST THE PEACE AND DIGNITY OF THE STATE

  
CYNTHIA RAMIREZ  
FOREMAN OF THE GRAND JURY

NO. CR02606

STATE OF TEXAS

vs.

ARGUSTUS CHARLES CHOYCE

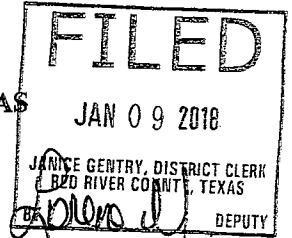
§ IN THE DISTRICT COURT

§

§ 6TH JUDICIAL DISTRICT

§

§ RED RIVER COUNTY, TEXAS



**MOTION FOR LEAVE TO AMEND INDICTMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW The State Of Texas and files its Motion for Leave to Amend Indictment and would show the Court as follows: Argustus Charles Choyce is charged with the offense of ASSAULT CAUSES BODILY INJURY IMPEDING BREATH which is a 2<sup>nd</sup> Degree Felony allegedly committed on the 10<sup>th</sup> day of June, 2017, that is enhanced to a 1<sup>st</sup> Degree Felony carrying a range of punishment of 25 years to Life.

1. Trial is set to commence on FEBRUARY 13, 2018.
2. Amended indictment charges neither a different nor an additional offense.
3. It needs to be amended as set forth in the attached Amended Indictment.
5. Pursuant to Articles 28.10 and 28.11 of the Texas Code of Criminal Procedure, the State asks the Court for leave to amend the indictment which was originally issued on JULY 20, 2017.

WHEREFORE, PREMISES CONSIDERED, Movant asks that the Court grant the relief requested.

Respectfully submitted,

RED RIVER COUNTY DISTRICT ATTORNEY  
Red River County Court House  
400 N. Walnut St  
Clarksville, TX 754263041  
(903) 427-2009  
(903) 427-5316

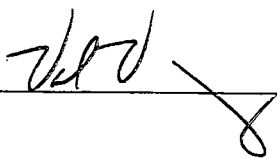
By: \_\_\_\_\_

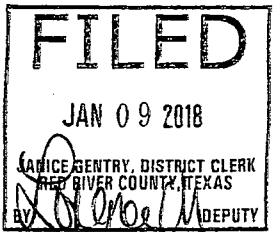
Val J. Varley  
Red River County and District Attorney  
Red River County, Texas  
State Bar No. 20496580  
valvarley@valornet.com

Appendix "J"

**CERTIFICATE OF SERVICE**

This is to certify that on January 9, 2018, a true and correct copy of the above and foregoing document was served on Defendant's Attorney, DAN MEEHAN, by hand delivery.

  
\_\_\_\_\_  
Val J. Varley



NO. CR02606

STATE OF TEXAS

vs.

ARGUSTUS CHARLES CHOYCE

§ IN THE DISTRICT COURT  
§  
§ 6TH JUDICIAL DISTRICT  
§  
§ RED RIVER COUNTY, TEXAS

ORDER

On 1/9, 2018, came on to be considered the State's Motion to Amend Indictment, and said

Motion is hereby:

(Granted) (Denied)

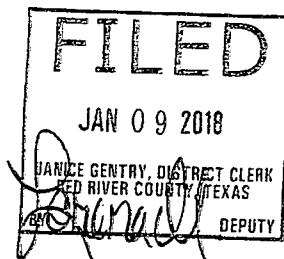
  
JUDGE PRESIDING

\* Defendant and counsel served copy of  
Amended Indictment in Court on this date.

Appendix "K"

## AMENDED INDICTMENT

DATE: JULY 20, 2017



IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Red River County, State of Texas, duly impaneled, sworn, charged, and organized at the JULY Term of Court, 2017 A.D. of the 6TH District Court of said county, in said court, at said term, upon their oaths do present that Argustus Charles Choyce, on or about the 10th day of June, 2017, did commit the offense of ASSAULT CAUSES BODILY INJURY IMPEDING BREATH by then and there intentionally, knowingly, and recklessly cause bodily injury to Michelle Harris, hereafter styled the complainant, a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, by intentionally, knowingly, and recklessly impeding the normal breathing or circulation of the blood of the complainant by applying pressure to the throat or neck of the complainant, and before the commission of the offense, the defendant had previously been convicted of an offense under Chapter 22 of the Texas Penal Code, against a person with whom the defendant had or had had a dating relationship, as described by Section 71.0021(b) of the Texas Family Code, to-wit: on the 10<sup>th</sup> day of January, 2012, in the 204<sup>th</sup> Judicial District Court of Dallas County, Texas, in cause number F-1058808-Q.

And it is further presented that, prior to the commission of the charged offense (hereafter styled the primary offense), on the 10<sup>th</sup> day of March, 1995, in cause number F-9364282-NT in the 283rd Judicial District Court of Dallas County, Texas, the defendant was finally convicted of the felony offense of Possession of a Controlled Substance.

And it is further presented that, prior to the commission of the primary offense, and after the conviction in cause number F-9364282-NT was final, the defendant committed the felony offense of Unlawful Possession of a Firearm by Felon and was finally convicted on the 4<sup>th</sup> day of August, 2000, in cause number F-9949606-WU in the 291<sup>st</sup> Judicial District Court of Dallas County, Texas.

The primary offense occurred in Red River County, and is therefore within the jurisdiction of the court in which it is presented.

AGAINST THE PEACE AND DIGNITY OF THE STATE

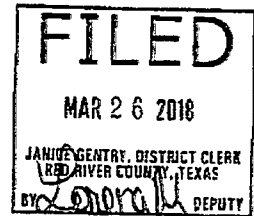
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CYNTHIA RAMIREZ  
FOREMAN OF THE GRAND JURY

*Appendix "L"*



CASE NO. CR02606 COUNT Single  
INCIDENT NO./TRN: 9142426359-A003



THE STATE OF TEXAS § IN THE 6TH DISTRICT  
v. § COURT  
ARGUSTUS CHARLES CHOYCE § RED RIVER COUNTY, TEXAS  
STATE ID NO.: §

### JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. R. WESLEY TIDWELL	Date Judgment Entered:	2/14/2018
Attorney for State:	VAL VARLEY	Attorney for Defendant:	DAN MEEHAN
<u>Offense for which Defendant Convicted:</u> ASSAULT CAUSES BODILY INJURY IMPEDE BREATH			
<u>Charging Instrument:</u> INDICTMENT		<u>Statute for Offense:</u> 22.01 Penal Code	
<u>Date of Offense:</u> 6/10/2017			
<u>Degree of Offense:</u> 2ND DEGREE FELONY		<u>Plea to Offense:</u> NOT GUILTY	
<u>Verdict of Jury:</u> GUILTY		<u>Findings on Deadly Weapon:</u> N/A	
Plea to 1 <sup>st</sup> Enhancement Paragraph:	TRUE	Plea to 2 <sup>nd</sup> Enhancement/Habitual Paragraph:	TRUE
Findings on 1 <sup>st</sup> Enhancement Paragraph:	TRUE	Findings on 2 <sup>nd</sup> Enhancement/Habitual Paragraph:	TRUE
<u>Punished Assessed by:</u> JURY	<u>Date Sentence Imposed:</u> 2/14/2018	<u>Date Sentence to Commence:</u> 2/14/2018	
<u>Punishment and Place of Confinement:</u> 50 YEARS INSTITUTIONAL DIVISION, TDCJ			

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A.

Fine: \$ N/A Court Costs: \$ 444.00 Restitution: \$ N/A Restitution Payable to: ☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A.

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:	From		to		From		to		From		to	
	From	to	From	to	From	to	From	to	From	to		

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

103 DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Red River County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

Appendix "M"



The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ Jury. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ Court. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ No Election. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ Confinement in State Jail or Institutional Division. The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the . Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ County Jail—Confinement / Confinement in Lieu of Payment. The Court ORDERS Defendant immediately committed to the custody of the Sheriff of County, Texas on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ Fine Only Payment. The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the County . Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☐ The Court ORDERS Defendant's sentence EXECUTED.

☐ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

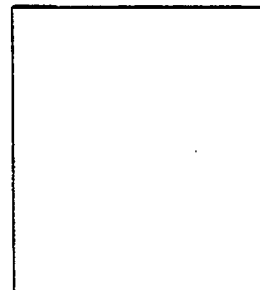
Furthermore, the following special findings or orders apply:

Signed and entered on February 14, 2018

X

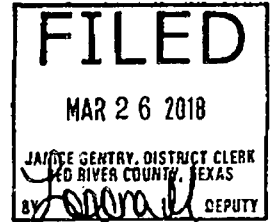
R. WESLEY TIDWELL  
JUDGE PRESIDING

Clerk: Janice Gentry



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CASE NO. CR02606

THE STATE OF TEXAS

IN THE 6<sup>TH</sup> DISTRICT COURT

V.

OF

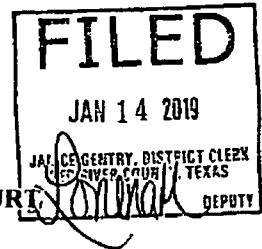
ARGUSTUS CHARLES CHOYCE

RED RIVER COUNTY, TEXAS

**JUDGMENT SENTENCE NUNC PRO TUNC**

This day came on to be heard the motion in writing of the state, filed herein, asking that a judgment nunc pro tunc be entered herein upon the minutes of this court, and the court having heard the motion, and being satisfied that the statements therein are true, is of the opinion that said motion should be granted. It is therefore considered, ordered, and adjudged by the court that the following judgment, which was rendered herein on the 7<sup>th</sup> day of March, A.D. 2018, by this court, but which was not then entered upon the minutes of this court, be now entered upon the minutes of this court, as of said last named date, to wit: February 14, 2018. The Incident No./TRN: reflects 9142426259-A003 and needs to be amended to reflect Incident No./TRN: 9142426359-A003.

*Appendix "N"*



CAUSE NO. CR02606

THE STATE OF TEXAS

VS.

ARGUSTUS CHARLES CHOYCE

§  
§  
§  
§  
§

IN THE 6<sup>TH</sup> DISTRICT COURT  
OF  
RED RIVER COUNTY, TEXAS

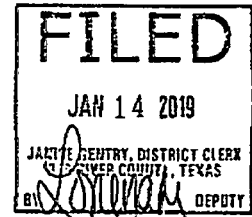
**AMENDED JUDGMENT NUNC PRO TUNC**

This day came on to be heard the motion in writing of the state, filed herein, asking that a judgment nunc pro tunc be entered herein upon the minutes of this court, and the court having heard the motion, and being satisfied that the statements therein are true, is of the opinion that said motion should be granted. It is therefore considered, ordered, and adjudged by the court that the following judgment which was rendered herein on the 9<sup>TH</sup> day of JANUARY, A.D. 2019, by this court, but which was not then entered upon the minutes of this court, be now entered upon the minutes of this court, as of said last named date, to wit: FEBRUARY 14, 2018: The Degree of Offense reflects 2<sup>ND</sup> DEGREE FELONY and needs to be amended to reflect 3<sup>RD</sup> DEGREE FELONY.

*Appendix "O"*



CASE No. CR02606 COUNT Single  
INCIDENT No./TRN: 9142426359-A003



THE STATE OF TEXAS

v.

ARGUSTUS CHARLES CHOYCE

STATE ID No.:

§  
§  
§  
§  
§  
§  
§

IN THE 6TH DISTRICT

COURT

RED RIVER COUNTY, TEXAS

## JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. R. WESLEY TIDWELL	Date Judgment Entered:	2/14/2018
Attorney for State:	VAL VARLEY	Attorney for Defendant:	DAN MEEHAN
<u>Offense for which Defendant Convicted:</u>			
ASSAULT CAUSES BODILY INJURY IMPEDE BREATH			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		22.01 Penal Code	
<u>Date of Offense:</u>			
6/10/2017			
<u>Degree of Offense:</u>		<u>Plea to Offense:</u>	
3RD DEGREE FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		N/A	
Plea to 1 <sup>st</sup> Enhancement Paragraph:	TRUE	Plea to 2 <sup>nd</sup> Enhancement/Habitual Paragraph:	TRUE
Findings on 1 <sup>st</sup> Enhancement Paragraph:	TRUE	Findings on 2 <sup>nd</sup> Enhancement/Habitual Paragraph:	TRUE
Punished Assessed by:	JURY	Date Sentence Imposed:	2/14/2018
		Date Sentence to Commence:	2/14/2018
Punishment and Place of Confinement:	50 YEARS INSTITUTIONAL DIVISION, TDCJ		

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine: s N/A Court Costs: s 444.00 Restitution: s N/A Restitution Payable to: ☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:	From	to	From	to	From	to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

103 DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Red River County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

Appendix "P"



The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ Jury. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ Court. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ No Election. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ Confinement in State Jail or Institutional Division. The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the . Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ County Jail—Confinement / Confinement in Lieu of Payment. The Court ORDERS Defendant immediately committed to the custody of the Sheriff of County, Texas on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ Fine Only Payment. The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the County. Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☐ The Court ORDERS Defendant's sentence EXECUTED.

☐ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

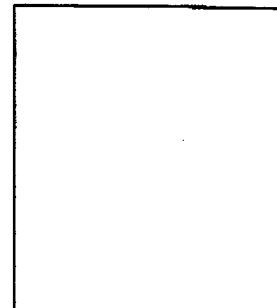
The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Signed and entered on February 14, 2018

X   
R. WESLEY TIDWELL  
JUDGE PRESIDING

Clerk: Janice Gentry



Right Thumbprint

No.

IN THE  
SUPREME COURT OF THE UNITED STATES

ARGENTUS CHARLES CHOYE - PETITIONER

vs.

BOBBY LUMPKIN - RESPONDENT

PROOF OF SERVICE

I ARGENTUS CHARLES CHOYE, do swear or declare that on this date  
'2022 as required by Supreme Court Rule 29. I have served  
the enclosed notice for leave to proceed in forma pauperis and Petition for a  
writ of Certiorari on respondent's counsel and the Clerk of U.S. Supreme  
Court by depositing the documents in the Mike Stiles Court mail system to  
be forward to the following addresses:

Supreme Court of the United States  
1 First Street, N.E.  
Washington, DC 20543

Jessica M. Nikolovich  
Assistant Attorney General  
P.O. Box 12548  
Capitol Station  
Austin, TX 78711  
512 936 1400

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on October 12, 2022.

Argutus Charles Choye

UNSWORN DECLARATION

I ARGUSTUS CHARLES CHOYCE, PETITIONER, TDCJ #2185811 an inmate incarcerated at Mark Stiles Unit in Beaumont City, Jefferson County, Texas 77705. I declare under penalty of perjury that the foregoing petition for a writ of certiorari and motion to proceed in forma pauperis was placed in the institution's internal mail system on October 12, 2022 addressed to the addresses below:

Supreme Court of the United States  
1 First Street, N.E.  
Washington, DC 20543

Jessica M. Manojlovich  
Assistant Attorney General  
P.O. Box 12548  
Capitol Station  
Austin, TX 78711  
(512) 936-1400

Executed November 2, 2022

Augustus Charles Choyce  
#2185811