

## **APPENDIX**

APPENDIX A: Martinez Cover Letter Dated May 14, 2020..... 1a

APPENDIX B: Trial Counsel Affidavit..... 2a

## **APPENDIX A**

May 14, 2020

El Paso District Clerk  
171st District Court  
500 E. San Antonio,  
El Paso, TX 79901

FILED  
NORMA FAVELA BARCELEAU  
DISTRICT CLERK

2021 FEB 25 AM 8:32

EL PASO COUNTY, TEXAS

BY *R. Adams*  
DEPUTY

RE: Ex Parte Patrick Leonard Martinez, No. 20130D04142-171-01 objections

Dear Clerk/Court,

Please find enclosed three objection motions to the State's Answer, the Findings of Fact and Conclusions of law and to Mr. Gibson's affidavit/statement.

Please file these in the above cause number and bring them to the trial courts' attention per T.R.A.P. 73.4(b)(2). If this matter has been forwarded to the Court of Criminal Appeals, then I ask that you please supplement the record to reflect my objection filings. This per T.R.A.P. 73 also.

Sincerely,

*Patrick Leonard Martinez 14 MAY 2020*

Patrick Leonard Martinez 1962692  
Coffield Unit  
2661 FM 2054  
Tennessee Colony, TX 75884

## **APPENDIX B**

CAUSE NO: 201304D04142-171-01

EXPARTE

IN THE 171<sup>ST</sup> DISTRICT COURT

PATRICK LEONARD MARTINEZ

APPLICANT

EL PASO COUNTY, TEXAS

STATEMENT OF DEFENSE COUNSEL MICHAEL ROY GIBSON

My name is Michael Roy Gibson. I was retained to defend Mr. Martinez in the above referenced matter. I have been advised that Mr. Martinez filed a Post Conviction Motion seeking relief for alleged errors in my representation of him. I have been asked by the District Attorney to give a Statement in connection with this matter and what follows is my recollection of occurrences.

Mr. Martinez was accused of sexually assaulting a child. Discovery furnished by the State brought my attention to certain matters.

First, the now teenaged, female who alleged she was sexually assaulted by Mr. Martinez when she was years younger, discovery served indicated that she had behavioral problems and some mental problems both in connection with education and relations with teachers and administrators at the School District and her relationship with Mr. Martinez who was her stepfather.

Discovery furnished by the State indicated that the complaining witness in this matter sent a sort of "birthday card" to Mr. Martinez, who had separated from her mother and was no longer living with her or the complaining witness. As far as I could reconstruct this card, which stated that defendant had been a great dad and that she loved and missed him, had been mailed or sent to him by the complaining

witness during a time when she was repeatedly being sexually molested, or had been prior to the sending of the card. I was very concerned with this evidence since it either indicated that she had sent the card to him after having being sexually molested or that she had never been sexually molested up to the time of sending the card to Mr. Martinez.

As I recall the State attempted to question my construction of this matter and insisted that the card had been sent after multiple sexual molestations of the complainant by Mr. Martinez.

I considered this to be a tremendous case to defend on behalf of the Defendant due to the foregoing apparent problem with the State's case. Mr. Martinez now indicates that I failed to tell him that, if he was convicted, there would be no parole but that he must serve his whole sentence. As I recall, this statement is correct. Additionally I recall, although that Martinez had not complained about it, that I did not advise him that probation was not available from a jury if he were convicted. He has not raised that issue but I do not recall whether I discussed it or not.

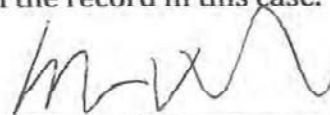
I was stumped when the jury returned the verdict of guilty and was even more stumped when they came back with a vicious sentence.

Every time I try a jury case, win lose or draw, I try to talk to the Jury who sat on the case, after the case is over, back in the jury room. Sometimes juries will not talk to me but I do not recall, after many years in this business, a Judge refusing to allow me to talk to the Jury who sat on the case, after the trial and after the verdict had been announced. I went into the area of the hall adjacent to the jury room

because I wanted to talk to the jury about their verdict. At the time I was there the Judge was in the jury room speaking to the jury and the Court Bailiff was standing outside by the door. The Bailiff indicated to me that I could not be in that area and that the Judge had advised him to order me to leave the area.

I do not recall whether I had some discussion with Mr. Martinez about any offer by way of plea agreement made by the State. I would certainly have presented that offer to Mr. Martinez if one had been made, as it is my duty and practice, one hundred percent of the time, to communicate offers to the Defendants. I can see that I would have recommended not to take deferred adjudication probation. Not because Mr. Martinez did not want to have to register as a sex offender, but because I could not see anyway to lose this case. If Mr. Martinez had wanted to take such a plea agreement he certainly could have done so because that is his right. However, I would have recommended against it and have pointed out in some detail my reason.

I do recall that there is a possibility that I did not talk to Mr. Martinez about there being no probation in the event of a conviction (as opposed to no parole) and I believe that I asked for counsel to be appointed to pursue a new trial on the basis that I failed to advise him that there was no probation available for a conviction under the Statute. I would hope, and recommend, that a new trial be granted because there was something weird about the Judge prohibiting me from talking to the jury after the trial was over and because I still cannot conceive of any jury convicting Mr. Martinez beyond a reasonable doubt, given the record in this case.

A handwritten signature in black ink, appearing to read 'Michael R. Gibson', written over a horizontal line.

Michael R. Gibson  
Attorney at Law