

APPENDIX

APPENDIX L

FILE COPY

RE: Case No. 23-0518 DATE: 2/16/2024
COA #: TC#:
STYLE: IN RE GANDY

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

MR. DWIGHT E. JEFFERSON
GREALISH & MCZEAL, PC
700 LOUISIANA ST., FL 48
HOUSTON, TX 77002-2700
* DELIVERED VIA E-MAIL *

In the Supreme Court of the United States

ROBERT GANDY, PETITIONER*v.***The Honorable Glenn Hegar
Texas Comptroller of Public Accounts*****ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS SUPREME******COURT***

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**GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

P.O. Box 13628 • Austin, TX 78711-3628

August 30, 2019

Mr. Robert Gandy
9550 Spring Green Blvd., #408
Katy, Texas 77494

RE: Wrongful Imprisonment Compensation Claim

Dear Mr. Gandy:

Our office is in receipt of your application requesting compensation for wrongful imprisonment under Chapter 103 of the Texas Civil Practice and Remedies Code. We have carefully reviewed the application and accompanying documents and have concluded that your claim for compensation cannot be approved based on the information provided.

Section 103.051(b-1) states that in determining the eligibility of a claimant, the Comptroller shall consider only the verified copies of documents filed under Subsection (a)(2). These documents are a pardon, court order, motion to dismiss, and affidavit, as applicable, justifying the application for compensation.¹ If the documents do not clearly indicate on their face that the person is entitled to compensation under Section 103.001(a)(2), the statute states that the Comptroller shall deny the claim.

Section 103.001(a)(2) provides three alternative avenues for establishing eligibility: a pardon based on innocence, a habeas corpus order granting a claim of actual innocence, or habeas corpus relief and an order of dismissal by the convicting court that is based on the statement of the prosecuting attorney that the claimant is actually innocent of the crime for which the claimant was sentenced.

As to the first basis of eligibility, your application did not include a pardon based on innocence, so Section 103.001(a)(2)(A) does not apply to your claim. Thus, you must satisfy either of Section 103.001(a)(2)'s other subsections to be eligible for compensation.

Section 103.001(a)(2)(B) provides that, for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced. The habeas corpus order included with your application did not meet the actual innocence requirement of Section 103.001(a)(2)(B).

¹ See Tex. Civ. Prac. & Rem. Code § 103.051(a)(2).

Mr. Robert Gandy

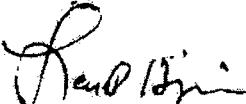
August 30, 2019

Page Two

Section 103.001(a)(2)(C) provides that a person may be eligible for compensation if they have been granted habeas corpus relief and their application includes a motion to dismiss in which the State's prosecuting attorney states that no credible evidence exists that inculpates the claimant and, either in the motion or in an affidavit, the prosecuting attorney states that he believes that the claimant is actually innocent of the crime for which the claimant was sentenced. Your application did not include a motion to dismiss containing the required statements from the State's prosecuting attorney, nor was there an affidavit containing the required statements included with your application.

Since your application did not meet one of the three alternative avenues for establishing eligibility under Section 103.001(a)(2), your claim cannot be approved. Pursuant to Section 103.051(d), you have 30 days in which you may file an application to cure. If you have any questions or need additional information, please contact the Comptroller's Judiciary Section by e-mail at leonard.higgins@cpa.texas.gov or by phone at (800) 531-5441, ext. 6-6100.

Sincerely,



Leonard Higgins
Comptroller's Judiciary Section



APPENDIX B

GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

June 22, 2020

Mr. Marcellous McZeal
Grealish & McZeal, P.C.
700 Louisiana Street, 48th Floor
Houston, Texas 77002

RE: Wrongful Imprisonment Compensation Claim

Dear Mr. McZeal:

Our office is in receipt of Mr. Robert Gandy's application requesting compensation for wrongful imprisonment under Chapter 103 of the Texas Civil Practice and Remedies Code. We have carefully reviewed the application and accompanying documents and have concluded that Mr. Gandy's claim for compensation cannot be approved based on the information provided.

Section 103.051(b-1) states that in determining the eligibility of a claimant, the Comptroller shall consider only the verified copies of documents filed under Subsection (a)(2). These documents are a pardon, court order, motion to dismiss, and affidavit, as applicable, justifying the application for compensation.¹ If the documents do not clearly indicate on their face that the person is entitled to compensation under Section 103.001(a)(2), the statute states that the Comptroller shall deny the claim.

Section 103.001(a)(2) provides three alternative avenues for establishing eligibility: a pardon based on innocence, a habeas corpus order granting a claim of actual innocence, or habeas corpus relief and an order of dismissal by the convicting court that is based on the statement of the prosecuting attorney that the claimant is actually innocent of the crime for which the claimant was sentenced.

As to the first basis of eligibility, Mr. Gandy's application did not include a pardon based on innocence, so Section 103.001(a)(2)(A) does not apply to his claim. Thus, he must satisfy either of Section 103.001(a)(2)'s other subsections to be eligible for compensation.

Section 103.001(a)(2)(B) provides that, for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced. The habeas corpus order included with Mr. Gandy's application did not meet the actual innocence requirement of Section 103.001(a)(2)(B).

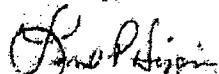
¹ See Tex. Civ. Prac. & Rem. Code § 103.051(b)(2).

Mr. Marcellous McZeal
June 22, 2020
Page Two

Section 103.001(a)(2)(C) provides that a person may be eligible for compensation if they have been granted habeas corpus relief and their application includes a motion to dismiss in which the State's prosecuting attorney states that no credible evidence exists that inculpates the claimant and, either in the motion or in an affidavit, the prosecuting attorney states that he believes that the claimant is actually innocent of the crime for which the claimant was sentenced. The motion to dismiss included with Mr. Gandy's application did not contain the required statements from the State's prosecuting attorney, nor was there an affidavit containing the required statements included with his application.

Since Mr. Gandy's application did not meet one of the three alternative avenues for establishing eligibility under Section 103.001(a)(2), his claim cannot be approved. Pursuant to Section 103.051(d), Mr. Gandy has 30 days in which he may file an application to cure. If you have any questions or need additional information, please contact the Comptroller's Judiciary Section by e-mail at leonard.higgins@cpa.texas.gov or by phone at (800) 531-5441, ext. 6-6100.

Sincerely,



Leonard Higgins
Comptroller's Judiciary Section

STATE OF TEXAS
COMPTROLLER'S OFFICE

APPENDIX C

REQUEST FOR WRONGFUL IMPRISONMENT COMPENSATION

COMPTROLLER USE ONLY

AGY	COBJ	TC	FUND	AY	PCA	APPROVAL	DOCUMENT NUMBER	DOCUMENT AMOUNT
<p>Claimant name and address ROBERT GANDY [REDACTED] [REDACTED]</p> <p>Phone number [REDACTED] Alternate phone number: [REDACTED]</p>						<p>Social Security Number [REDACTED]</p> <p>TDCJ Number 565821</p> <p>Mail completed form and documentation to: COMPTROLLER'S JUDICIARY SECTION P.O. Box 13528 Austin, TX 78711-3528 Call 1-800-531-5441, ext. 6-5965 or (512) 336-5935</p>		
REQUIRED DOCUMENTATION								
<p>As applicable, a verified copy of the pardon / court order / motion to dismiss / affidavit justifying the application for compensation</p>								Enclosed <input checked="" type="checkbox"/>
<p>A written statement from Texas Department of Criminal Justice verifying the length of incarceration.</p>								Enclosed <input checked="" type="checkbox"/>
<p>If applicable, a written statement from county or municipality verifying the length of incarceration.</p>								Enclosed <input type="checkbox"/>
<p>If applicable, a written statement from Texas Department of Criminal Justice verifying length of time spent on parole.</p>								Enclosed <input checked="" type="checkbox"/>
<p>If applicable, a written statement from the Texas Department of Public Safety verifying registration as a sex offender and length of registration</p>								Enclosed <input type="checkbox"/>
<p>If applicable, a certified copy of each child support order under which child support payments became due during the time the claimant served in prison and copies of the official child support payment records described by Section 234.009, Texas Family Code, for that period.</p>								Enclosed <input type="checkbox"/>
<p>For proof of birth date provide a copy of birth certificate, or state driver's license, or state ID, or a notarized statement verifying month, day and year of birth</p>								Enclosed <input checked="" type="checkbox"/>
Total Amount of Claim Supported by the Attached Documentation:								\$1,575,000.00
CLAIMANT'S CERTIFICATION								
<p>I, <u>ROBERT GANDY</u>, do hereby certify that the amount requested is due and payable pursuant to Chapter 103 of the Texas Civil Practice and Remedies Code and I will immediately notify the Comptroller's Judiciary Section in writing of any changes or conditions which will disqualify this payment.</p>								
Sign here	<p>Claimant Signature </p>				<p>Date 04/17/2020</p>			
IF REPRESENTED, CLAIMANT'S LEGAL COUNSEL								
<p>Attorney of Record Marcelious McZeal GREALISH MCZEAL, P.C.</p>					<p>Contact Phone Number (Area code and phone number) (713) 255-3234</p>			
<p>Address/City/State/Zip code 700 Louisiana, 48th Floor, Houston, Texas 77002</p>					<p>Email Address mmczeal@grealishmczeal.com</p>			
<p>SUBMISSION OF FEE REPORT Fees are limited by Section 103.101, Texas Civil Practice and Remedies Code. As required by Section 103.102, not later than the 14th day after the date the application or cured application is filed, a person seeking payment for preparing, filing, or curing the application must file a fee report with the Comptroller's Judiciary Section. The fee report must include the name of the applicant, the total dollar amount sought for fees and the number of hours the person worked preparing, filing, or curing the application. The fee report is public information subject to Chapter 552, Texas Government Code.</p>								
COMPTROLLER APPROVAL								
<p>I approve this request for payment and to the best of my knowledge this request for payment is true and correct. This payment complies with Chapter 103 of the Texas Civil Practice and Remedies Code.</p>								Audited by
Sign here	<p>Approved by [REDACTED]</p>				<p>Date [REDACTED]</p>			

GREALISH & MCZEAL

A Professional Corporation

ATTORNEYS AND COUNSELORS AT LAW

700 Louisiana, 48th Floor

Houston, Texas 77002

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Faxsimile (713) 783-2502

www.grealishmczeal.com

From the Desk of:

Marcelous S. McZeal

mczeal@grealishmczeal.com

May 4, 2020

Glenn Hegar
Texas Comptroller
Comptroller's Judiciary Section
P.O. Box 13528
Austin, TX 78711-3528

RE: Demand for Compensation under the Tim Cole Act. Tex.Civ.Prac. & Rem. Code 103.001

In re: *Robert Gandy*

Dear Mr. Hegar,

Our office represents Robert Gandy in his lawful claim for compensation pursuant to the express provisions of the Tim Cole Act (the "Act"). Tex.Civ.Prac. & Rem. Code 103.001.

Specifically, Mr. Gandy seeks relief under Section 103.001(a)(1)(2)(B) which states:

Sec.103.001. CLAIMANTS ENTITLED TO COMPENSATION AND HEALTH BENEFITS COVERAGE. (a) A person is entitled to compensation if: (1) the person has served in whole or in part a sentence in prison under the laws of this state; and (2) the person: (B) has been granted relief in accordance with a writ of habeas corpus that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced.

In re: *R. Gandy*

Procedural History

Mr. Gandy was convicted of Aggravated Robbery on September 19, 1990 in the 351st District Court of Harris County, Texas and was sentenced to life in prison. On August 02, 2018, the Honorable George Powell, Presiding Judge, 351st District Court, signed an "Agreed Proposed Findings of Fact and Conclusions of Law and Order" ("Findings of Fact"). In that document, the Court held that the State's use of false, misleading and or perjured testimony violated Mr. Gandy's constitutional rights and that by a preponderance of the evidence, but for the false testimony, Mr. Gandy would not have been convicted of the offense. The trial court concluded that Mr. Gandy was illegally restrained by virtue of the denial of his 5th and 6th Amendment rights under the U.S. Constitution through denial of his rights to Due Process and a Fair Trial and that Mr. Gandy should be Granted a new trial and recommended the Texas Court of Criminal Appeals Grant habeas relief to Mr. Gandy.

Mandamus Order

On May 8, 2019 the Texas Court of Criminal Appeals issued an Opinion in Court of Criminal Appeals No. WR-22-074-10 (COA No. 01-90-00856-CR) (Trial Court Case No. 532347-E). The Opinion was issued on the Application for Writ of Habeas Corpus by Robert Gandy.

The Opinion, attached herein, Ordered Habeas Corpus Relief be Granted and Mr. Gandy's judgment in Cause No. 532347 be set aside. The Texas Court of Criminal Appeal's Opinion Granting Habeas Relief stated that the "trial court finds by a preponderance of evidence that but for the false testimony, Applicant (Mr. Gandy) would not have been convicted of this offense."

Actual Innocence

The Act states that a person is entitled to compensation if the person "has been granted relief in accordance with a writ of habeas corpus that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced." TEX. CIV. PRAC. & REM.CODE § 103.001(a)(2)(B). Further, the documents must clearly indicate on their face that the person is entitled to compensation. TEX. CIV. PRAC. & REM.CODE § 103.051(b-1). Therefore, in order for Mr. Gandy to be eligible for compensation under the TCA, the Court of Criminal Appeals' Granting of Habeas relief must be based on actual innocence as that term is defined in Texas jurisprudence

As is *In re Allen*, 366 S.W.3d 696 (Tex. 2012), Mr. Gandy sought habeas relief from the Court of Criminal Appeals on a *Schlup*-type claim of actual innocence based on alleged constitutional violations. *See Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851.

The Court of Criminal Appeals recognizes two types of "actual innocence" claims. The relevant "actual innocence" claim, a *Schlup*-type claim, is a procedural gateway through which a petitioner must pass to have his otherwise barred constitutional claim considered on the merits. *Schlup*, 513 U.S. at 315, 115 S. Ct. 851. A court finding that a *Schlup* claim was established means that the applicant demonstrated that the constitutional error at trial probably resulted in the conviction of one who was actually innocent. *Ex parte Spencer*, 337 S.W.3d 869, 878 (Tex.Crim. App.2011).

Mr. Gandy's habeas relief on his *Schlup*-type claim is eligible for compensation under TEX. CIV. PRAC. & REM.CODE § 103.051(b)(1).

The Comptroller's duty herein in determining eligibility is purely ministerial. TEX. CIV. PRAC. & REM.CODE § 103.051(b-1).

In *Allen* 366 S.W.3d 696 (Tex. 2012) the Texas Supreme Court decided 1) whether a grant of habeas relief on a *Schlup*-type claim merits compensation under the TCA as a writ based on a court finding of actual innocence, and if so, 2) whether the Court of Criminal Appeals' decision clearly indicated on its face that the writ was based on a court finding or determination of actual innocence.

As the Texas Supreme Court stated in *Allen*, actual innocence does not merely require a showing that a reasonable doubt exists in the light of the new evidence, but rather that no reasonable juror would have found the defendant guilty.¹

The Court of Criminal Appeals' opinion on its face determined that *Allen* was actually innocent. The grant of habeas relief meant that the Court of Criminal Appeals held that Allen showed actual innocence by a preponderance of the evidence, passing through the gateway to have his ineffective assistance of counsel claim considered on the merits. Actual innocence remains an essential part of the *Schlup* claim, for without the court finding actual innocence, the writ would be denied.²

Even if a court does not explicitly state that its holding is based on actual innocence, implicitly the court must find that the applicant is actually innocent to grant relief on a *Schlup* claim.³ Ultimately, the *Allen* Court made clear that because the Court of Criminal Appeals granted habeas relief on a *Schlup* claim, Allen's court order clearly indicates on its face that relief was based on actual innocence.

¹ *In re Allen*, 366 S.W.3d 696, 704 (Tex. 2012)

² *In re Allen*, 366 S.W.3d 696, 709 (Tex. 2012)

³ *In re Allen*, 366 S.W.3d 696, 710 (Tex. 2012)

Here, the Court of Criminal Appeals Granted Habeas Relief and stated Mr. Gandy (Applicant therein) would not have been convicted of the offense but for the finding by a preponderance of evidence of the admittance of false testimony.⁴ Mr. Gandy's relief is clearly *Schlup* type and is precisely the relief authorized and instructed by the Texas Supreme Court for compensation under the Act.

In re Allen makes clear, the Court of Criminal Appeals' granting of habeas relief on Mr. Gandy's constitutional claims is a court finding, or determination," that Mr. Gandy is actually innocent of the crime for which he was sentenced. Texas Civil Practice Remedies Code §103.001 et seq.

Mr. Gandy hereby makes demand for compensation on the Office of the Texas Comptroller pursuant to the Texas Civil Practice Remedies Code §103.001, §103.051 and §103.052 (a)(1).

Respectfully submitted,

GREALISH & McZEAL, PC

BY: Marcellous S. McZeal
Marcellous S. McZeal
SBN: 00798368
700 Louisiana Street, 48th Floor
Houston, Texas 77002
Telephone: (713) 255-3234
Facsimile: (713) 783-2502
email: mczeal@grealishmczeal.com

Dwight E. Jefferson
State Bar No. 10605600
Email: djefferson@coatsrose.com
P.O. Box 22455
Houston, TX 77227
(713) 653-7378 Telephone
(713) 651-0220 Facsimile

ATTORNEYS FOR ROBERT GANDY

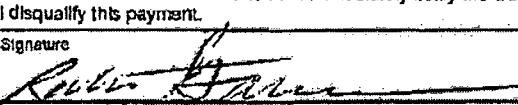
⁴ See Mandamus attached hereto

STATE OF TEXAS
COMPTROLLER'S OFFICE

APPENDIX D

REQUEST FOR WRONGFUL IMPRISONMENT COMPENSATION

COMPTROLLER USE ONLY

AGY	COBJ	TC	FUND	AY	PCA	APPROVAL	DOCUMENT NUMBER	DOCUMENT AMOUNT
<p>Claimant name and address ROBERT GANDY [REDACTED] [REDACTED]</p>								<p>Social Security Number [REDACTED]</p> <p>TDCJ Number 565821</p>
<p>Phone number [REDACTED]</p>								<p>Alternate phone number [REDACTED]</p> <p>Mail completed form and documentation to: COMPTROLLER'S JUDICIARY SECTION P.O. Box 13528 Austin, TX 78711-3528 Call 1-800-631-5441, ext. 8-5985 or (512) 936-5985</p>
REQUIRED DOCUMENTATION								
<p>As applicable, a verified copy of the pardon / court order / motion to dismiss / affidavit justifying the application for compensation.</p>								Enclosed <input checked="" type="checkbox"/>
<p>A written statement from Texas Department of Criminal Justice verifying the length of incarceration.</p>								Enclosed <input checked="" type="checkbox"/>
<p>If applicable, a written statement from county or municipality verifying the length of incarceration.</p>								Enclosed <input type="checkbox"/>
<p>If applicable, a written statement from Texas Department of Criminal Justice verifying length of time spent on parole.</p>								Enclosed <input checked="" type="checkbox"/>
<p>If applicable, a written statement from the Texas Department of Public Safety verifying registration as a sex offender and length of registration.</p>								Enclosed <input type="checkbox"/>
<p>If applicable, a certified copy of each child support order under which child support payments became due during the time the claimant served in prison and copies of the official child support payment records described by Section 234.009, Texas Family Code, for that period.</p>								Enclosed <input type="checkbox"/>
<p>For proof of birth date provide a copy of birth certificate, or state driver's license, or state ID, or a notarized statement verifying month, day and year of birth.</p>								Enclosed <input checked="" type="checkbox"/>
Total Amount of Claim Supported by the Attached Documentation:								\$1,575,000.00
CLAIMANT'S CERTIFICATION								
<p>I, ROBERT GANDY, do hereby certify that the amount requested is due and payable pursuant to Chapter 103 of the Texas Civil Practice and Remedies Code and I will immediately notify the Comptroller's Judiciary Section in writing of any changes or conditions which will disqualify this payment.</p>								
<p>sign here ➤</p>	<p>Claimant Signature </p>				<p>Date 08/07/2019</p>			
IF REPRESENTED, CLAIMANT'S LEGAL COUNSEL								
<p>Attorney of Record</p>					<p>Contact Phone Number (Area code and phone number)</p>			
<p>Address/City/State/zip code</p>					<p>Email Address</p>			
<p>SUBMISSION OF FEE REPORT Fees are limited by Section 103.101, Texas Civil Practice and Remedies Code. As required by Section 103.102, not later than the 14th day after the date the application or cured application is filed, a person seeking payment for preparing, filing, or curing the application must file a fee report with the Comptroller's Judiciary Section. The fee report must include the name of the applicant, the total dollar amount sought for fees and the number of hours the person worked preparing, filing, or curing the application. The fee report is public information subject to Chapter 552, Texas Government Code.</p>								
COMPTROLLER APPROVAL								
<p>I approve this request for payment and to the best of my knowledge this request for payment is true and correct. This payment complies with Chapter 103 of the Texas Civil Practice and Remedies Code.</p>								Audited by:
<p>sign here ➤</p>	<p>Approved by:</p>				<p>Date</p>			

WRONGFUL CONVICTION COMPENSATION SCHEDULE CALCULATED

Robert Gandy, Claimant is entitled to \$1,200,000.00 Lump sum payment for 15-Years incarceration from June 01, 1989 date sentence begin parole release date 06/10/2004.

Robert Gandy, Claimant is entitled to \$375,000.00 Lump sum payment for 15-Years parole from June 10, 2004 date begin parole release date until date of mandate issuance June 04/2019 Granting Writ and release from parole.

Robert Gandy, Claimant is entitled to the State mandated Annuity annually at 5% interest rate based upon State mandated compensation and health insurance benefits.

**GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

P.O. Box 13628 • Austin, TX 78711-3528

May 25, 2023

Mr. Marcellous McZeal
Grealish & McZeal, P.C.
700 Louisiana Street, 48th Floor
Houston, Texas 77002

RE: Robert Gandy - Wrongful Imprisonment Compensation Claim

Dear Mr. McZeal:

Our office is in receipt of Mr. Robert Gandy's application requesting compensation for wrongful imprisonment under Chapter 103 of the Texas Civil Practice and Remedies Code. We have carefully reviewed the application and accompanying documents and have concluded that Mr. Gandy's claim for compensation cannot be approved based on the information provided.

Section 103.051(b-1) states that in determining the eligibility of a claimant, the Comptroller shall consider only the verified copies of documents filed under Subsection (a)(2). These documents are a pardon, court order, motion to dismiss, and affidavit, as applicable, justifying the application for compensation.¹ If the documents do not clearly indicate on their face that the person is entitled to compensation under Section 103.001(a)(2), the statute states that the Comptroller shall deny the claim.

Section 103.001(a)(2) provides three alternative avenues for establishing eligibility: a pardon based on innocence, a habeas corpus order granting a claim of actual innocence, or habeas corpus relief and an order of dismissal by the convicting court that is based on the statement of the prosecuting attorney that the claimant is actually innocent of the crime for which the claimant was sentenced.

As to the first basis of eligibility, Mr. Gandy's application did not include a pardon based on innocence, so Section 103.001(a)(2)(A) does not apply to his claim. Thus, he must satisfy either of Section 103.001(a)(2)'s other subsections to be eligible for compensation.

Section 103.001(a)(2)(B) provides that, for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced. Additionally, an application for compensation under Section 103.001(a)(2)(B) must be filed within three years of the date the application for writ of habeas corpus was granted. Mr. Gandy is not eligible for

¹ See Tex. Civ. Prac. & Rem. Code § 103.051(a)(2).

Mr. Marcellous McZeal
May 25, 2023
Page Two

compensation under Section 103.001(a)(2)(B) because the habeas corpus order included with his application is beyond the three-year limitation period proscribed by Section 103.003(2).²

Section 103.001(a)(2)(C) provides that a person may be eligible for compensation if they have been granted habeas corpus relief and their application includes a motion to dismiss in which the State's prosecuting attorney states that no credible evidence exists that inculpates the claimant and, either in the motion or in an affidavit, the prosecuting attorney states that he believes that the claimant is actually innocent of the crime for which the claimant was sentenced. The motion to dismiss included with Mr. Gandy's application did not contain the required statements from the State's prosecuting attorney, nor was there an affidavit containing the required statements included with his application.

Since Mr. Gandy's application did not meet one of the three alternative avenues for establishing eligibility under Section 103.001(a)(2), his claim cannot be approved. Pursuant to Section 103.051(d), Mr. Gandy has 30 days in which he may file an application to cure. If you have any questions or need additional information, please contact the Comptroller's Judiciary Section by e-mail at leonard.higgins@cpa.texas.gov or by phone at (800) 531-5441, ext. 6-6100.

Sincerely,

Leonard Higgins

Leonard Higgins
Comptroller's Judiciary Section

² Additionally, Mr. Gandy's application under Section 103.001(a)(2)(B) is identical to his 2020 application, which was denied by the Comptroller on the basis that it did not meet the actual innocence requirement in Section 103.001(a)(2)(B). The Texas Supreme Court subsequently denied Mr. Gandy's petition for mandamus review.

GREALISH & MCZEAL

A Professional Corporation

ATTORNEYS AND COUNSELORS AT LAW

700 Louisiana, 48th Floor
Houston, Texas 77002
Telephone (713) 255-3234
Facsimile (713) 783-2502
www.grealishmczeal.com

APPENDIX F

From the Desk of:
Marcellous S. McZeal
smczeal@grealishmczeal.com



April 12, 2023

Glenn Hegar
Texas Comptroller
Comptroller's Judiciary Section
P.O. Box 13528
Austin, TX 78711-3528
Via US Certified Mail Return Receipt Requested

cc: Via FED EX
Texas State Comptroller's Office Judiciary Section
LBJ State Office Building
111 E. 17th St. Austin, TX. 78711
ATTN: Leonard Higgins

RE: Reconsideration Demand for Compensation under the Tim Cole Act.
Tex. Civ. Prac. & Rem. Code 103.001 based upon US Supreme Court precedence
Thompson v. Clark, ET AL Cert No. 20-659, decided 2022.

In re: *Robert Gandy*

Dear Mr. Hegar,

Our office represents Robert Gandy in his claim for compensation pursuant to the express provisions of the Tim Cole Act (the "Act"). Tex. Civ. Prac. & Rem. Code 103.001.

Mr. Gandy submits he is eligible for compensation under Sections 103.001(a)(2)(B) which provides for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced, or Mr. Gandy is eligible under Section 103.001(a)(2)(C)(i) which provides; for a person to be eligible for compensation they must have been granted relief in accordance with a writ of habeas corpus, and the state district court in which the charge against the person was pending has entered an order dismissing the charge.

Mr. Gandy has challenged the constitutionality of the additional requirement of Section 103.001(a)(1)(2)(C)(ii) that the state district court's dismissal order be based on a declaration by the state's attorney, in either the motion to dismiss or by affidavit, that the person was actually innocent of the crime for which the person was sentenced, as arbitrary and capricious and in violation of the Fourteenth Amendment to the United States Constitution's grant of equal protection under law. (See Exhibit 1).

Procedural History

The claimant, Mr. Gandy was convicted of Aggravated Robbery on September 19, 1990, in the 351st District Court of Harris County, Texas and was

sentenced to life in prison. On August 02, 2018, the Honorable George Powell, Presiding Judge, 351st District Court, signed an “Agreed Proposed Findings of Fact and Conclusions of Law and Order” (“Findings of Fact”). (See Exhibit 3). In that document, the Court held that the State’s use of false, misleading and/or perjured testimony violated Mr. Gandy’s constitutional rights and that by a preponderance of the evidence, but for the false testimony, Mr. Gandy would not have been found guilty of aggravated robbery. The trial court concluded that Mr. Gandy was falsely imprisoned by virtue of the denial of his rights to due process and a fair trial under the 5th and 6th Amendments to the U.S. Constitution, and that Mr. Gandy should be granted a new trial. The trial court recommended the Texas Court of Criminal Appeals grant habeas relief to Mr. Gandy.

On May 8, 2019, the Texas Court of Criminal Appeals vacated Plaintiff’s conviction and sentence by written Opinion in the Texas Court of Criminal Appeals No. WR-22-074-10 (COA No. 01-90-00856-CR) (Trial Court Case No. 532347-E). (See Exhibit 4). The Opinion was issued on the Application for Writ of Habeas Corpus granting Robert Gandy relief. The Opinion, attached hereto, ordered habeas corpus relief be granted and Mr. Gandy’s Judgment in Cause No. 532347 be set aside. The Texas Court of Criminal Appeal’s Opinion granting habeas relief stated that the “trial court finds by a preponderance of evidence that but for the false testimony, Claimant (Mr. Gandy) would not have been convicted of this offense.”

The claimant served 15-years in TDCJ and was on parole for 15 years at the time his conviction was vacated, and charges dismissed by the trial court on April 16th, 2020. (See Exhibit 2).

Claimant is within the 3-year statute of limitations to file this claim for compensation with the Texas Comptroller since his criminal charges were not dismissed until April 16th, 2020. (See Exhibit 5).

On August 7, 2019, Claimant filed his request under the Tim Cole Act seeking compensation for his wrongful conviction and imprisonment. The Texas Comptroller of Public Accounts denied his request for relief. On May 4, 2020, Claimant filed a second request after retaining counsel. On June 22, 2020, the Texas Comptroller of Public Accounts denied his second request for compensation, stating as the reason for the denial that Mr. Gandy was not declared actually innocent by the states attorney, as required by Section 103.001(a)(2)(C)(ii).

Claimant filed a Civil Action No. 4:22-CV-1471 in the U.S. District Court for the Southern District of Texas against Glenn Hegar, Texas Comptroller in his official capacity seeking declaratory judgment and injunctive relief challenging the constitutionality of the “Actual Innocence” provision of the Tim Cole Act seeking to enjoin the Comptroller from enforcing Section 103.001(2)(C)(ii), that the district court's dismissal order is based on a motion to dismiss in which the state's attorney states that no credible evidence exists that inculpates the defendant and, either in the motion or in an affidavit, the state's attorney states that the state's attorney believes the defendant is actually innocent of the crime for which the person was sentenced. Mr. Gandy's challenge is based upon the recent U.S. Supreme Court case of *Thompson v. Clark*, ET AL Cert No. 20-659. In *Thompson*, the Court held that a petitioner need not prove actual innocence after his conviction has been vacated and criminal charges dismissed to entitle him to seek compensation for his wrongful arrest and false imprisonment. The Court stated, “*Questions concerning whether a criminal defendant was wrongly charged, or whether an individual may*

seek redress for wrongful prosecution, cannot reasonably depend on whether the prosecutor or court happened to explain why charges were dismissed. Therefore, requiring a plaintiff to show that his prosecution ended with an affirmative indication of innocence is not necessary.” Id. The Court concluded that for purposes of seeking redress the claimant need only demonstrate a writ was granted vacating conviction and his criminal charges were dismissed.

In another case involving compensation under the Tim Cole Act, *Brown v. Harris County*, ET AL No. 22-0256, decided September 2022, in its opinion on page 4, the Texas Supreme Court opined that by finding, “*no reasonable juror could find Brown guilty of murder.*”, “*In short, the special prosecutor found Brown actually innocent*”

Analogous to Applicant Gandy, the finding in *Brown* that “*no reasonable juror could find Brown guilty of murder*”, is synonymous with the findings of the trial court that “*but for the false testimony of these two witnesses (accomplice-witness Richards and FBI special agent Riley), no rational trier of fact could have rendered a conviction in his case.*”¹, and the finding of the Court of Criminal Appeals that, “*The trial court by a preponderance of evidence found that, but for the false testimony of the F.B.I. examiner Applicant would not have been convicted of this offence.*”² Therefore, under the finding in *Brown*, the Court of Criminal Appeals grant of Mr. Gandy’s writ was “in short” a finding of actual innocence. Id and *In re Allen*, 366 S.W.3d 696 (Tex. 2012).

Mr. Gandy sought habeas relief from the Court of Criminal Appeals on a *Schlup*-type claim of actual innocence based on alleged constitutional violations. See *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851. A court finding that a *Schlup* claim was established means the Claimant demonstrated that the constitutional

¹ Trial court findings of fact Exhibit 3, page 3, 6 and 7.

² Court of Criminal Appeals Opinion Exhibit 4, page 2.

error at trial probably resulted in the conviction of one who was actually innocent. *Ex parte Spencer*, 337 S.W.3d 869, 878 (Tex.Crim. App.2011).

As the Texas Supreme Court stated in *Allen*, actual innocence does not merely require a showing that a reasonable doubt exists in the light of the new evidence, but rather that no reasonable juror would have found the defendant guilty.³

The Court of Criminal Appeals' opinion on its face determined that *Allen* was actually innocent. The grant of habeas relief meant that the Court of Criminal Appeals held that Allen showed actual innocence by a preponderance of the evidence. **Actual innocence remains an essential part of the *Schlup* claim, for without the court finding actual innocence, the writ would be denied.**⁴

Even if a court does not explicitly state that its holding is based on actual innocence, implicitly the court must find that the Claimant is actually innocent to grant relief on a *Schlup* claim.⁵ Ultimately, the *Allen* Court made clear that because the Court of Criminal Appeals granted habeas relief on a *Schlup* claim, Allen's writ clearly indicates on its face that relief was based on actual innocence. Mr. Gandy's relief is clearly *Schlup* type and is precisely the relief authorized and instructed by the Texas Supreme Court for compensation under the Act.

In re Allen makes clear, the Court of Criminal Appeals' granting of habeas relief on Mr. Gandy's constitutional claims is a court finding, or determination,

³ *In re Allen*, 366 S.W.3d 696, 704 (Tex. 2012)

⁴ *In re Allen*, 366 S.W.3d 696, 709 (Tex. 2012)

⁵ *In re Allen*, 366 S.W.3d 696, 710 (Tex. 2012)

that Mr. Gandy is actually innocent of the crime for which he was sentenced. Texas Civil Practice Remedies Code §103.001 et seq.

Claimant has cited case law in which compensation was granted where there was no declaration by the State's Attorney of the claimant's actual innocence, and no express finding by the court of the same. These cases show that the Act's legislative intent of compensating wrongfully imprisoned persons can be fulfilled without an express declaration of actual innocence. *In Re Billy Frederick Allen* 366 S.W. 3d 696 (Tex. 2012), *In Re Lester*, 602 S.W.3d 469 (Tex. 2020). In *In Re Allen* and *In Re Lester* the Texas Supreme Court established circumstances upon which compensation is recoverable without an express finding or declaration of actual innocence by the States Attorney or the court. In the cited cases the Texas Supreme Court held that implicit in the granting of a writ vacating a conviction based on violation of constitutional rights was a finding of actual innocence, which entitled the claimants in those cases to compensation under the Act.

Mr. Gandy hereby makes demand for compensation on the Office of the Texas Comptroller pursuant to the Texas Civil Practice Remedies Code §103.001, §103.051 and §103.052 (a)(1).

Respectfully submitted,
GREALISH & McZEAL, PC

BY: /s/ Marcellous S. McZeal

Marcellous S. McZeal

SBN: 00798368

700 Louisiana Street, 48th Floor

Houston, Texas 77002

Telephone: (713) 255-3234

Facsimile: (713) 783-2502

email: mmczeal@grealishmczeal.com

Dwight E. Jefferson

State Bar No. 10605600

email:

djefferson@grealishmczeal.com

700 Louisiana Street, 48th Floor

Houston, Texas 77002

Telephone: (713) 255-3234

Facsimile: (713) 783-2502

ATTORNEYS FOR ROBERT

GANDY

Table of Exhibits

Exhibit 1 Application for Compensation Form

Exhibit 2 TDCJ Record of Time Served including Parole Time

Exhibit 3 Trial Court Order on Writ of Habeas Corpus

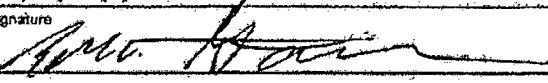
Exhibit 4 Tex. Court of Crim. Appeals Order Mandate Granting Writ

Exhibit 5 Trial Court Order Dismissing Charges

STATE OF TEXAS
COMPTROLLER'S OFFICE

REQUEST FOR WRONGFUL IMPRISONMENT COMPENSATION

COMPTROLLER USE ONLY

AGY	COBJ	TC	FUND	AY	PCA	APPROVAL	DOCUMENT NUMBER	DOCUMENT AMOUNT
Claimant name and address Robert Gandy 9550 Spring Green Blvd Ste. 408, Katy, TX 77494 (832) 654-8107 Phone number						Social Security Number [REDACTED] TDCJ Number [REDACTED]		
						Mail completed form and documentation to: COMPTROLLER'S JUDICIARY SECTION P.O. Box 10528 Austin, TX 78711-5528 Call 1-800-531-5441, ext. 8-5985 or (512) 936-5985		
REQUIRED DOCUMENTATION								
As applicable, a verified copy of the pardon / court order / motion to dismiss / affidavit justifying the application for compensation.						Enclosed <input checked="" type="checkbox"/>		
A written statement from Texas Department of Criminal Justice verifying the length of incarceration.						Enclosed <input checked="" type="checkbox"/>		
If applicable, a written statement from county or municipality verifying the length of incarceration.						Enclosed <input type="checkbox"/>		
If applicable, a written statement from Texas Department of Criminal Justice verifying length of time spent on parole.						Enclosed <input checked="" type="checkbox"/>		
If applicable, a written statement from the Texas Department of Public Safety verifying registration as a sex offender and length of registration.						Enclosed <input type="checkbox"/>		
If applicable, a certified copy of each child support order under which child support payments became due during the time the claimant served in prison and copies of the official child support payment records described by Section 234.009, Texas Family Code, for that period.						Enclosed <input type="checkbox"/>		
For proof of birth date provide a copy of birth certificate, or state driver's license, or state ID, or a notarized statement verifying month, day and year of birth.						Enclosed <input checked="" type="checkbox"/>		
Total Amount of Claim Supported by the Attached Documentation: \$1,575,000.00								
CLAIMANT'S CERTIFICATION								
I, <u>Robert Gandy</u> , do hereby certify that the amount requested is due and payable pursuant to Chapter 103 of the Texas Civil Practice and Remedies Code and I will immediately notify the Comptroller's Judiciary Section in writing of any changes or conditions which will disqualify this payment.								
sign here	Claimant Signature 					Date 04/03/23		
IF REPRESENTED, CLAIMANT'S LEGAL COUNSEL								
Attorney of Record Marcellous G. McZeal GREALISH MCZEAL, P.C.						Contact Phone Number (Area code and phone number) (713) 255-3234		
Address/City/State/zip code 700 Louisiana, 48th Fl, Houston, TX 77002						Email Address mmiczeal@grealishmczeal.com		
SUBMISSION OF FEE REPORT Fees are limited by Section 103.101, Texas Civil Practice and Remedies Code. As required by Section 103.102, not later than the 14th day after the date the application or cured application is filed, a person seeking payment for preparing, filing, or curing the application must file a fee report with the Comptroller's Judiciary Section. The fee report must include the name of the applicant, the total dollar amount sought for fees and the number of hours the person worked preparing, filing, or curing the application. The fee report is public information subject to Chapter 552, Texas Government Code.								
COMPTROLLER APPROVAL								
I approve this request for payment and to the best of my knowledge this request for payment is true and correct. This payment complies with Chapter 103 of the Texas Civil Practice and Remedies Code.								Audited by:
sign here	Approved by:					Date		

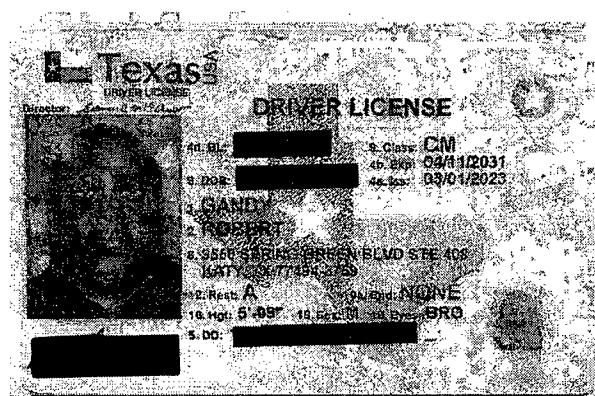
WRONGFUL CONVICTION COMPENSATION SCHEDULE CALCULATED

Robert Gandy, Claimant is entitled to \$1,200,000.00 Lump sum payment for 15 years Incarceration from June 01, 1989 date sentence begin parole release date 06/10/2004.

Robert Gandy, Claimant is entitled to \$375,000.00 Lump sum payment for 15 Years parole from June 10, 2004 date begin parole release date until date of mandate issuance June 04/2019 Granting Writ and release from parole.

Robert Gandy, Claimant is entitled to the State mandated Annuity annually at 5% interest rate based upon State mandated compensation and health insurance benefits.

APPENDIX G



APPENDIX H

Filed 20 April 16 P2:51
Marlyn Burgess - District Clerk
Harris County TAB 8

CAUSE NO: 053234701610

THE STATE OF TEXAS

VS.

GANDY, ROBERT

OFFENSE: AGG ROBBERY-DEADLY WPN

IN THE 351ST DISTRICT COURT
OF
HARRIS COUNTY, TEXAS

Pgs-1

DIDISM
(996)

MOTION TO DISMISS

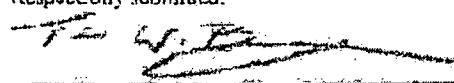
The State respectfully requests the Court to dismiss the above entitled and numbered criminal action for the following reason(s):

- Case refiled as Cause No. .
- Defendant was convicted in another case: Cause No. .
- Missing witness.
- Request of complaining witness.
- Dispositive motion granted.
- Probable cause exists, but case cannot be proven beyond a reasonable doubt at this time.
- In custody elsewhere - will not be extradited to Harris County.
- Due to passage of time, defendant not likely to be locatable, if arrested, successfully prosecuted.
- No probable cause exists at this time to believe the defendant committed the offense.
- Other (explanation required)

EXPLANATION: The State is dismissing this case due to complications with the co-defendant's previous testimony, and what is in the interest of justice based on the current facts. This dismissal should not be considered to support a finding of actual innocence as that assertion is not true, and probable cause regarding this Defendant does exist in this case.

WHEREFORE, PREMISES CONSIDERED, it is requested that the above entitled and numbered cause be dismissed.

Respectfully submitted,

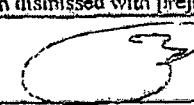

BALLENGEE, TIMOTHY
Assistant District Attorney
Harris County District Attorney's Office
TBC No. 24063798
BALLENGEE_TIM@DAO.HCTX.NET

ORDER AND NOTICE

The foregoing motion having been presented to me on this the April 16, 2020, and the same having been considered, it is, therefore, ORDERED, ADJUDGED and DECREED that said above entitled and numbered cause be and the same is hereby dismissed.

NOTICE: Pursuant to Article 38.50(d) of the Code of Criminal Procedure, the Court is notifying you that any toxicological evidence collected in your case pursuant to an investigation or prosecution of an offense under Chapter 49 of the Penal Code does not have to be retained or preserved and may be destroyed pursuant to the authority of Article 38.50(c)(3) and (e) if your indictment or information has been dismissed with prejudice.

SIGNED AND ENTERED on April 16, 2020.


Judge Presiding
Harris County 351st District Court
Harris County, Texas

APPENDIX I

FILED

Chris Daniel
District Clerk

NOV 30 2018

WRIT NO. 0532347-E

IN THE COURT OF CRIMINAL APPEALS

AUSTIN, TEXAS

Time: _____
By _____
Harris County, Texas
Deputy

Ex Parte	§	IN THE 351 ST JUDICIAL
ROBERT GANDY,	§	DISTRICT COURT
Applicant.	§	HARRIS COUNTY, TEXAS

TRIAL COURT FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AFTER REMAND

The trial court hereby enters findings of fact, conclusions of law, and recommendation after remand as follows:

1.

PROCEEDINGS

Applicant filed an original application for writ of habeas corpus and the Texas Court of Criminal Appeals remanded in case number WR-22-074-10 for findings of fact and conclusions of law as to whether relevant scientific evidence is currently available and was not available at the time of Applicant's trial or at the time of the filings of his previous habeas applications. The trial court shall make findings of fact and conclusions of law as to whether such evidence would be admissible at a trial. The trial court shall also make findings of fact and conclusions of law as to whether, but for the testimony of the F.B.I. examiner, by a preponderance of the evidence Applicant would not have been convicted. The trial court shall also make findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief. The trial court found that there were controverted, previously unresolved facts material to the legality of the applicant's confinement. Applicant requested a bench conference before the trial court which occurred on July 12, 2018 in which Applicant appeared Pro se and the State appeared through its assistant district attorney Rehana Vohra. The parties approached the court in which no witness testimony was taken to be transcribed. The trial court issued a new order rescinding its previous order adopting the State's findings of

RECODER'S MEMORANDUM
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at the time of imaging.

fact and conclusions of law. The court received sworn affidavits and relevant trial transcript that the court had not reviewed or considered in entering its previous order denying relief. The trial court considered the State's argument at the bench conference, applicant's compelling argument and entered the following findings of fact and conclusions of law in the interest of justice.

II.

Ground for Relief

Applicant is illegally restrained by virtue of denial of his 5th and 6th amendment rights under the US Constitution through denial of his rights to Due Process and a Fair Trial based upon the State's reliance on "Junk Science" at trial, regarding expert testimony of ballistic analysis upon which scientific evidence has been determined to be unreliable.

Findings of Fact:

1. Applicant first asserts that material facts exist are in controversy that were previously unresolved. The trial court agrees.
2. Applicant is entitled to relief under Article 11.073, T.C.C.P. because scientific ballistic analysis testimony was presented at his jury trial by FBI agent John P. Riley, testified that test on bullets found in applicant's residence, his vehicle, in co-defendant Foster's residence and in the restaurant showed that some of the bullets from each of these places could have come from the same box of ammunition. This testimony was false, misleading and inflammatory to the jury and gave inference that bullets found at the crime scene and defendants' residences came from the same box of ammunition. (Transcript R. VI, 427). He found that the composition of the bullets fell into two groups.

(Transcript R. IX, Exhibit 28 presented at trial). His testimony went on to state that "His opinion was that the bullets within each group typically are found within the same box of cartridges but pointed out that they could have come from any group of boxes manufactured at the location and about same date, but it is most likely they came from the same box of ammunition. (Transcript R. VI, 428-429; IX, Exhibit 28 presented at trial).

The State stipulates and concedes in its proposed findings of fact and conclusions of law and order after remand to the foregoing facts pages 3-6. They went on to stipulate that, during closing arguments, the State argued, among other things, that while Riley's report may not be enough circumstantial evidence in and of itself, when combined with all the other evidence, the pieces come together (VI R.R. at 625-26); that Riley's report indicates that bullets that are analytically indistinguishable typically come from the same box of ammunition (VI R.R. at 648); and that it was most likely the bullets came from the same box of ammunition as it would be introduced by the same manufacturer on the same date (VI R.R. at 648); that Riley's report shows that Clayvell Richard is not just lying about everything (VI R.R. at 648-49).

Applicant filed a certified copy of the testimony provided by Clayvell Richard, the witness accomplice to show the court that the conviction was based upon the perjured testimony of a witness accomplice. The only person to implicate applicant in the crime and the false testimony of F.B.I. special agent John P. Riley the ballistics expert used to corroborate that witness, thus but for the false testimony of these two witnesses no rational trier of facts could have rendered a conviction in this case.

The trial court concluded that the State's closing argument coupled with the expert testimony squarely mislead the jury and prejudiced the defense at trial, causing the jury to believe that the expert testimony was independent corroboration to support a finding of guilt. The jury was given instructions during guilt innocence phase, that they must find independent testimony or evidence to corroborate the witness accomplish, Clayvell Richard testimony in order to make a finding of guilt.

3. The trial court finds applicant was prejudiced at his jury trial by false, misleading or prejudicial expert testimony given by FBI agent John P. Riley.
4. The trial court adopts conclusions of law that the relevant scientific evidence is currently available and was not available at the time of the applicant's trial or at the time of the applicant's previous habeas applications and would have been admissible at trial under the Texas Rules of Evidence at page 13. See TEX. CRIM. PROC. CODE art. 11.073(b)(1) and (c) (West 2015).
5. Applicant filed a certified affidavit of Dr. Marc LeBeau, the F.B.I. Senior Forensic Scientist dated May 03, 2018 indicating that the testimony of F.B.I. agent John P. Riley's testimony during applicant's trial exceeded the limits of the science and was not supported by the F.B.I. He indicated the F.B.I.'s review of the CBLA testimony from this case did find at least one instance (on page 426-429 of the reviewed transcript) in which it was interpreted that FBI Supervisory Special Agent Riley stated or implied that evidence from the case could be associated to a single box of ammunition. (See Exhibit B in the habeas record)

6. Applicant has shown by a preponderance of evidence that, but for the false testimony of Riley, the applicant would not have been convicted of aggravated robbery as the case was based upon circumstantial evidence only.
7. The trial court finds that applicant should be granted relief and a new trial because the expert witness testimony denied him a fair trial and due process as the testimony was relevant, material and prejudicial, and but for his testimony applicant would not have been found guilty of aggravated robbery.

Subsequent Writ of Habeas Corpus

Applicant filed the instant subsequent application for writ of habeas corpus pursuant to Article 11.073 because the scientific evidence relied upon by the State at trial has been contradicted by relevant scientific evidence that was unavailable at trial, and if it had not been presented at trial he would not have been convicted.

Authorities in support of relief

Ex parte Miles, Nos. AP-76,488 & AP-76,489 (Tex. Crim. App. February 15, 2012); and Ex parte Robbins, No. WR-73,484-02 (Tex. Crim. App. November 26, 2014). Where the Texas Court of Criminal Appeals granted subsequent writ of habeas corpus remanding for new trial on the basis of "Junk Science" testimony given at petitioner's trial.

Conclusion

The trial court finds applicant is illegally restrained on parole by virtue of denial of his 5th and 6th Amendment rights under the US Constitution through denial of his rights to Due Process and a Fair Trial based upon the State's reliance on "Junk Science" at trial, regarding expert testimony

of ballistic analysis upon which scientific evidence has been determined to be unreliable.
Applicant should be granted a new trial in the interest of justice.

Order

The trial court hereby enters findings of fact, conclusions of law after remand, and recommend the Texas Court of Criminal Appeals Grant applicant relief in the interest of justice.

11/30/18

Presiding Judge

Unofficial Copy Office of Marilyn Burgess District Clerk



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-22,074-10

EX PARTE ROBERT GANDY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 532347-E IN THE 351ST DISTRICT COURT
FROM HARRIS COUNTY**

Per curiam. YEARY, J., filed a dissenting opinion in which KELLER, P.J., and KEASLER and SLAUGHTER, JJ., joined.

OPINION

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated robbery and sentenced to life imprisonment. The First Court of Appeals affirmed his conviction. *Gandy v. State*, 835 S.W.2d 238 (Tex. App. — Houston [1st Dist.] 1992).

Applicant contends that he was denied due process and is entitled to a new trial pursuant to Article 11.073 of the Texas Code of Criminal Procedure, because the State relied on false and misleading "junk science" evidence and testimony to obtain his conviction. Applicant alleges that

the evidence relied upon by the State at trial has since been contradicted by relevant scientific evidence that was unavailable at the time of his trial. Applicant alleges that but for the false and misleading testimony of the F.B.I. examiner, he would not have been convicted. We remanded this application to the trial court for findings of fact and conclusions of law.

At trial, an F.B.I. examiner testified that tests on bullets found in Applicant's residence and vehicle, in the residence of a co-defendant, and at the scene of the offense showed that some of the bullets from each location could have come from the same box of ammunition. Although the examiner testified that the bullets could have come from any group of boxes manufactured at the same location and about the same date, he testified that his opinion was that they likely came from the same box of ammunition. The F.B.I. has since conducted a review of all compositional bullet lead analysis testimony given by its examiners, and has determined that the examiner's testimony in this case exceeded the limits of the science, and is not supported by the F.B.I..

The trial court on remand has considered affidavits and arguments from the parties, and finds that the testimony of the F.B.I. examiner at Applicant's trial was false and misleading. The trial court finds that relevant scientific evidence is currently available and was not available at the time of Applicant's trial or previous habeas applications, and that such evidence would have been admissible at trial under the Texas Rules of Evidence. The trial court finds by a preponderance of evidence that but for the false testimony of the F.B.I. examiner, Applicant would not have been convicted of this offense.

Relief is granted. The judgment in Cause No. 532347 in the District Court of County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris County to answer the charges as set out in the indictment. The trial court shall issue any necessary bench warrant within 10 days

after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and Pardons and Paroles Division.

Delivered: May 8, 2019
Do not publish



SHARON KELLER
PRESIDING JUDGE

MIKE KEASLER
BARBARA P. HERVEY
BERT RICHARDSON
KEVIN P. YEARY
DAVID NEWELL
MARY LOU KEEL
SCOTT WALKER
MICHELLE M. SLAUGHTER
JUDGES

COURT OF CRIMINAL APPEALS

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

DEANA WILLIAMSON
CLERK
(512) 463-1551

SIAN SCHILHAB
GENERAL COUNSEL
(512) 463-1600

Tuesday, June 04, 2019

District Clerk Harris County
Post Conviction/Appeals Section
P.O. Box 4651
Houston, TX 77210-4651
* Delivered Via E-Mail *

Re: Gandy, Robert
CCA No. WR-22,074-10
Trial Court Case No. 532347-E

COA No. 01-90-00856-CR

The Court of Criminal Appeals has this day issued the mandate in the above-referenced and styled case number. The mandate will be transmitted electronically only.

DISTRICT CLERK
MANDATE RECEIPT ACKNOWLEDGEMENT

Pursuant to Rule 51.2(a)(1) T.R.A.P, please acknowledge receipt of the mandate of the Court of Criminal Appeals in the above numbered and styled case via this email link.

Sincerely,

Deana Williamson, Clerk

cc: Presiding Judge 351st District Court (Delivered Via E-Mail)
District Attorney Harris County (Delivered Via E-Mail)
Debra Gibbs (Delivered Via E-Mail)
Sharon Felfe Howell (Delivered Via E-Mail)
Robert Gandy



TEXAS COURT OF CRIMINAL APPEALS
Austin, Texas

M A N D A T E

THE STATE OF TEXAS,

TO THE 351ST DISTRICT COURT OF HARRIS COUNTY — GREETINGS:

Before our **COURT OF CRIMINAL APPEALS**, on **MAY 8, 2019**, the cause upon an Application for Writ of Habeas Corpus styled:

EX PARTE ROBERT GANDY

CCRA No. **WR-22,074-10**

Tr. Crt. No. **532347-E**

was determined; and therein our said **COURT OF CRIMINAL APPEALS** made its order in these words:

"This cause came on to be heard on the Application for Writ of Habeas Corpus, and the same being considered, it is **ORDERED, ADJUDGED AND DECREED** that **HABEAS CORPUS RELIEF IS GRANTED**, in accordance with the Opinion of this Court, and that this Decision be certified below for Observance."

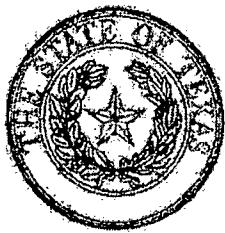
WHEREFORE, We command you to observe the order of our said **COURT OF CRIMINAL APPEALS** in this behalf and in all things have it duly recognized, obeyed and executed.

WITNESS, THE HONORABLE SHARON KELLER, Presiding Judge
of our said COURT OF CRIMINAL APPEALS, with the Seal thereof

Annexed, at the City of Austin,
on this day Tuesday, June 04, 2019.

DEANA WILLIAMSON, Clerk

APPENDIX K



Texas Department of Criminal Justice

Bryan Collier
Executive Director

08/29/2019

Robert Gandy
9550 Spring Green Blvd., Suite 408
Katy, TX 77494

RE: Your Public Information Request Dated 06/13/2019

Dear Robert Gandy:

Enclosed is the responsive releasable information to your above referenced request. Your request is now closed and no further action will be taken. If you have any questions about your request, please feel free to contact me at the number below.

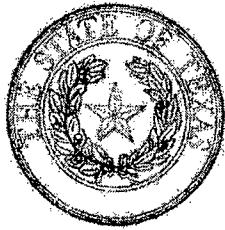
Please note that any records released may contain deidentified confidential personal identifying information. Any attempt to reidentify personal identifying information may give rise to civil liability and constitute a criminal offense punishable by up to one year confinement, a \$4,000 fine, or both.

Sincerely,

Angela Martin
Clerk II
Classification and Records
936-437-6509
Texas Department of Criminal Justice

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

P.O. Box 99
Huntsville, Texas 77342-0099
Phone: (936) 437-6509 Fax: (936) 437-6227
www.tdcj.texas.gov



Texas Department of Criminal Justice

Bryan Collier
Executive Director

08/29/2019

Robert Gandy
9550 Sprng Green Blvd., Suite 408
Katy, TX 77494

RE: Gandy, Robert

TDCJ#:

Pursuant to your request I am providing you the following basic information sheet of the incarceration dates for the above listed offender. Also if our office can be of further assistance please do not hesitate in contacting us on our website www.tdcj.texas.gov or call us at 936-437-6509.

Sincerely,

Angela Martin
Clerk II
Classification & Records

AM/am
cc: file

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

P.O. Box 99
Huntsville, Texas 77342-0099
936-437-6509
www.tdcj.texas.gov



**BASIC INFORMATION RELATING TO OFFENDER (INMATE) OF
TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

Name: Gandy, Robert

DOB: [REDACTED]

Race/Gender: B/M

Controlling Offense:

Charge: Aggravated Robbery w/Deadly Weapon Sentenced: 09/19/1990

County/Court: Harris

Minimum Expiration of Sentence Date: 01/01/9999

Maximum Expiration of Sentence Date: 01/01/9999

Date received: 10/22/1990

Sentence began Date: 06/01/1989

Date Released: 06/10/2004 (Parole)

Date Discharged: 06/06/2019 (Discharged by Court Order)

Additional Sentences:

Charge: _____ TDCJ: _____

County/Court: _____ Sentenced: _____

Minimum Expiration of Sentence Date: _____

Maximum Expiration of Sentence Date: _____

Date received:

Sentence began Date: _____

Date Released: 01/01/2014

Date Discharged: