

APPENDICE

A.

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS

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STATE OF TEXAS
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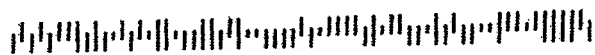
PENNINGTON, MICHAEL ERIC Tr. Ct. No. W401-82879-2016-HC WR-95,883-01

This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court and on the Court's independent review of the record.

Deana Williamson, Clerk

MICHAEL ERIC PENNINGTON
HUGHES UNIT - TDC # 2181941
RT. 2, BOX 4400
GATESVILLE, TX 76597

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APPENDICE

B.

W401-82879-2016-HC

Ex parte	§	In the
Michael Eric Pennington	§	
	§	401st District Court
	§	
	§	of Collin County, Texas

Findings of Fact and Conclusions of Law

On this day came to be heard Applicant's Application for Writ of Habeas Corpus and the State's Response. The Court finds that:

Ineffective Assistance of Trial Counsel

1. Applicant claims that his trial counsel, Edwin King, was ineffective by conceding guilt in his closing argument;
2. To prevail on a claim of ineffective assistance of trial counsel, an applicant must show by a preponderance of the evidence that: (1) trial counsel's performance was deficient in that it fell below the prevailing professional norms; and (2) there is a reasonable probability that, but for counsel's alleged error, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 684 (1984); *Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999). Ineffective assistance allegations must be firmly founded in the record. *See Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005);

3. Edwin King is an officer of the Court, well known to the Court, and credible;

4. Mr. King submitted a comprehensive, detailed, and credible affidavit in response to this court's order designating issues;

5. The facts of the case were that the victim called 911. She stated that Applicant was trying to break into her house and threatening to kill her. Police arrived minutes later and found Applicant walking out of the house, covered in blood, and carrying a bloody knife. He had parked down the street to avoid detection. Police found the victim inside the house with multiple stab wounds. She died at the scene;

6. Mr. King's trial strategy was to pursue a lesser-included offense of murder;

7. Applicant consented both to Mr. King's strategy and the concordant concession that Applicant was guilty of murder, agreeing that this was the most realistic approach for avoiding a capital murder conviction when considering the strength of the State's case;

8. Mr. King had been successful in other trials when making the same argument;

9. Mr. King's strategy was reasonably sound and within the prevailing professional norms for capital murder representation;

10. Applicant has failed to prove by a preponderance of the evidence that trial counsel's representation was deficient or that he was prejudiced by this alleged deficiency;

Ineffective Assistance of Appellate Counsel

11. Applicant claims that Appellate Counsel, John Schomburger, was ineffective for failing to raise an issue challenging the trial court's denial of a motion to quash the jury panel;

12. To prevail on a claim of ineffective assistance of appellate counsel, an applicant must show by a preponderance of the evidence that: (1) counsel's decision not to raise a particular point of error was objectively unreasonable; and (2) there is a reasonable probability that, but for counsel's failure to raise that particular issue, he would have prevailed on appeal. *Ex parte Miller*, 330 S.W.3d 610, 623-24 (Tex. Crim. App. 2009);

13. Appellate counsel is not required to raise on appeal every arguable appellate point. *See Jones v. Barnes*, 463 U.S. 745, 751 (1983). The Supreme Court has stated that the "process of 'winnowing out weaker claims on appeal

and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Burger v. Kemp*, 483 U.S. 776, 784 (1987). But if appellate counsel fails to raise a claim with indisputable merit under well-settled law that would necessarily result in reversible error, appellate counsel is ineffective for failing to raise it. *Miller*, 330 S.W.3d at 624;

14. Mr. Schomburger is an officer of this Court, well known to the Court, and credible;

15. Mr. Schomburger submitted a comprehensive, detailed, and credible affidavit in response to this Court's order designating issues;

16. Mr. Schomburger correctly concluded that the trial court's denial of his motion to quash was not erroneous. The venireman stated that he was a jailer and he knew Applicant. The venireman had no specific knowledge of the case, and the related voir dire examination failed to establish a connection between the venireman's occupation as a jailer and his knowledge of Applicant;

17. The trial court's denial of Applicant's motion to quash was not an error;

18. Mr. Schomburger correctly concluded that, even if the trial court's decision were erroneous, any error would have been harmless under Texas Rule of Appellate Procedure 44.2(b);

19. The venireman in question was not selected for the jury, and no selected juror heard his comment and interpreted it to mean there was an extraneous offense;

20. The trial court's charge included an instruction that "*The fact that a person has been arrested, confined, or charged with an offense gives rise to no inference of guilt at his trial.*" Under applicable case law, the jury is presumed to have followed this instruction;

21. As Mr. Schomburger's affidavit (citing the Dallas Court of Appeals's decision) points out, the evidence of Applicant's guilt was overwhelming; and

22. Applicant has failed to prove by a preponderance of the evidence that appellate counsel's representation was deficient, or that he was prejudiced by this alleged deficiency.

Accordingly, this Court recommends that the Court of Criminal Appeals **deny** Applicant's application for writ of habeas corpus.

IT IS ORDERED that the Clerk of this Court shall send copies of the Order to: 1) the Court of Criminal Appeals; (2) Michael Eric Pennington, TDCJ # 02181941, TDCJ - Alfred D. Hughes Unit, 3201 FM 929, Gatesville, TX 76528; and (3) the Appellate Division of the Collin County Criminal District Attorney's Office.

IT IS FURTHER ORDERED that the District Clerk shall immediately transmit to the Court of Criminal Appeals a copy of Applicant's Application, the State's Response, and this Order.

Filed: July 26, 2024
Michael Gould
District Clerk
Collin County, Texas
By: Joseph, Christina

12:28 pm 26th July
SIGNED this day of , 2024.



JUDGE PRESIDING