

No. 18-9227

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT SPARKS,
Petitioner,

-v-

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,
Respondent.

On petition for writ of certiorari to the
United States Court of Appeals for the Fifth Circuit

MOTION FOR A STAY OF EXECUTION

This is a capital case with an execution date of September 25, 2019

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ARGUMENT

Petitioner Robert Sparks, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101 (f), requests that this Court stay his execution pending the consideration and disposition of his recently filed petition for writ of certiorari.

On May 6, 2019, Petitioner Sparks filed a petition for writ of certiorari related to his initial federal collateral review proceedings. He argues that his death sentence was obtained in violation of the United States Constitution because the jury specifically relied upon the false testimony of prosecution expert A.P. Merillat when sentencing him to death, and because a courtroom bailiff wore a “syringe tie” on the date of jury deliberations, creating unacceptable risk of impermissible factors coming into play at trial. *See* Petition for Writ of Certiorari. On the date Petitioner Sparks filed his petition there was no execution date in place.

On June 3, 2019, the State of Texas, represented by the Attorney General’s Office, requested an extension of time to file its response. *See* Motion to Extend Time. That request was granted on June 5, 2019. On June 11, 2019, the Dallas County District Attorney’s office, at the request of the Attorney General’s Office, filed a motion to set an execution date, which was granted on June 25, 2019. *See* Appendix A, Order Setting Execution Date and Warrant of Execution. On July 10, 2019, the Respondent filed her brief in opposition before this Court.

Petitioner Sparks requests a stay of execution so that this Court can properly resolve the merits of his petition for writ of certiorari.¹ A stay of execution is warranted where there is: (1) a reasonable probability that four members of the Court would consider the underlying issues sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; (2) a significant possibility of reversal of the lower court's decision; and (3) a likelihood that irreparable harm will result if no stay is granted. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Petitioner Sparks satisfies these criteria for both constitutional claims before the Court.

The first question for review involves the false testimony of State's Expert A.P. Merillat. *See* Petition for Writ of Certiorari, at 16-27. Throughout the majority of his testimony, Merillat was adamant that Sparks *would* be classified at the median security classification level known as "G-3" if he was sentenced to life in prison as opposed to death. *See id.* at 7-13. This testimony was false; in reality TDCJ would perform a full diagnostic review prior to assigning Sparks a classification level, and Sparks' classification would likely have been much more restrictive than Merillat's description. *Id.* Two other capital cases have been reversed based upon Merillat's

¹ In *Barefoot v. Estelle*, this Court explained that if appellate courts are "unable to resolve the merits of an appeal before the scheduled date of execution, the petitioner is entitled to a stay of execution to permit due consideration of the merits." 463 U.S. 880, 889 (1983). Indeed, this Court has repeatedly recognized the importance of appellate review in the capital context. *See Pulley v. Harris*, 465 U.S. 37, 59 (1984) (Stevens, J., concurring in part) ("[O]ur decision certainly recognized what was plain from *Gregg*, *Proffitt*, and *Jurek*: that some form of meaningful appellate review is an essential safeguard against the arbitrary and capricious imposition of death sentences by individual juries and judges."); *Parker v. Dugger*, 498 U.S. 308, 321 (1991) ("We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally.").

similarly false testimony.² And, in Sparks' case, we know the jury relied on Merillat's false testimony when sentencing Sparks to death because the jury notes specifically asked for his testimony. *See* Appendix 2.

The District Court denied this claim based upon the idea that Merillat corrected his testimony on cross-examination. ROA.967-974. However, the District Court did not consider the effect of Merillat's testimony as a whole, and specifically omitted the last question answered by Merillat where he walked back his brief foray with the truth. *See* Petition for Writ of Certiorari at 12-13. The District Court erred because this Court's precedent requires consideration of a witness's testimony taken as a whole. *See Alcorta v. State of Tex.*, 355 U.S. 28, 31 (1957). Simply reviewing the trial court's response to the jury's inquiries about Merillat's testimony proves that his testimony, taken as a whole, left the jury with the false impression that any prisoner sentenced to life in prison *would* enter prison at the median, "G-3," classification level. *See* Appendix 2.³

The Circuit Court identified a different reason for denying Sparks a certificate of appealability. The Circuit Court denied relief based upon the idea that Sparks was at fault for failing to uncover and raise the false evidence claim in his initial

² *See Estrada v. State*, 313 S.W.3d 274, 286 (Tex. Crim. App. 2010); *Velez v. State*, AP-76,051, 2012 WL 2130890 (Tex. Crim. App. 2012).

³ It should be noted that the Respondent initially skips over the last answer in Merillat's cross examination where he walked back his brief foray with the truth. *See* Respondent's Brief in Opposition, at 8-11. By considering Merillat's testimony in piecemeal fashion, the Respondent makes the same error as the District Court.

state post-conviction proceedings. *Sparks*, 756 Fed. Appx. at 401. However, Sparks was not at fault for failing to raise this claim because this Court’s precedent establishes that the prosecution has the burden to correct false testimony, something that never happened in this case.⁴

At a minimum, a Certificate of Appealability should have issued on this claim because jurists of reason have debated whether or not petitioners in Sparks’ position were to blame for failing to raise identical claims in a timelier fashion. In *Estrada*, where the Texas Court of Criminal Appeals (CCA) granted the petitioner relief in spite of correcting testimony by his own expert, the CCA found that Estrada “had no duty to object because he could not reasonably be expected to have known that the testimony was false at the time that it was made” and because the case involved “the State’s duty to correct ‘false’ testimony whenever it comes to the State’s attention.” *Estrada*, 313 S.W.3d at 288.⁵ In *Velez v. State*, the CCA didn’t bother addressing preservation of error and instead simply noted that “[b]oth Merillat and the state knew or should have known of that regulation and therefore knew or should have

⁴ See *Banks v. Dretke*, 540 U.S. 668, 696 (2004) (“A rule thus declaring ‘prosecutor may hide, defendant must seek,’ is not tenable in a system constitutionally bound to accord defendants due process.”); See also *Strickler v. Greene*, 527 U.S. 263, 283 (1999) (Explaining that it is reasonable for trial counsel and habeas counsel to rely on the presumption that the prosecutor “will perform his duty to disclose all exculpatory materials. . .”)

⁵ The Court of Criminal Appeals also noted its belief “that the Supreme Court would find this to be constitutionally intolerable.” *Estrada*, 313 S.W.3d at 287 (citing *Johnson v. Mississippi*, 486 U.S. 578, 590, 108 S.Ct. 1981, 100 L.Ed.2d 575 (1988) (death sentence based on “materially inaccurate” evidence violates Eighth Amendment); *Townsend v. Burke*, 334 U.S. 736, 740–41, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) (it violates due process to base conviction on “materially untrue” information “whether caused by carelessness or design”)).

known that Merillat's testimony about the G classification of inmates who were sentenced to life without parole was false.” *Velez*, 2012 WL 2130890, at 32.

In considering the first two *Barefoot* criteria, it is important that this claim was not adjudicated on the merits by the state court, and therefore no AEDPA deference applies.⁶ Also, the question for the Circuit Court was whether “jurists of reason could disagree with the district court's resolution of [Sparks] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Based upon the applicable standard of review and the facts of this case, Sparks has established the first two *Barefoot* criteria for a stay of execution. The third criteria, a “likelihood of irreparable harm,” is established because Sparks will be executed if this Court does not grant a stay of execution.

The second question for review involves courtroom bailiff Bobby Moorehead, who showed his support for a sentence of death by wearing a homemade syringe tie on the day the jury began its punishment deliberations. *See* Petition for Certiorari at 13-16. It is undisputed bailiff Moorehead had been in close contact with the jury throughout trial, that he wore the syringe tie outside of his of his clothing for part of

⁶ *See, e.g., Trevino v. Davis*, 829 F.3d 328, 341 (5th Cir. 2016) (“AEDPA deference does not apply here, however, because the district court was not reviewing a state court decision on the merits of Trevino's claim but rather addressing the merits for the first time.”)

the day, and that he was sitting in a chair behind sparks about ten yards away from the jury. *Id.* Sparks has explained that the lower courts' decisions improperly required him to prove that the actions of courtroom personnel actually affected the jury's decision. *Id.* at 28-31. The lower courts have ignored this Court's relevant precedent:

“Whenever a courtroom arrangement is challenged as inherently prejudicial, therefore, the question must be not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether “an unacceptable risk is presented of impermissible factors coming into play,” *Williams*, 425 U.S., at 505.”

Holbrook v. Flynn, 475 U.S. 560, 570 (1986).

The Respondent counters that Sparks has failed to demonstrate that *Flynn* is the proper standard, suggesting that *Flynn*'s holdings do not apply on habeas review. *See* Respondent's Brief in Opposition at 12-13. But *Flynn* is a habeas case, and *Flynn* provides the standard for state-sponsored courtroom practices, unlike the Fifth Circuit cases cited by the Respondent which involved outside influence not committed by state actors.⁷ Indeed, the Respondent cannot cite a single case suggesting that *Flynn* does not provide the proper framework for review.

Flynn counsels that “certain practices pose such a threat to the ‘fairness of the factfinding process’ that they must be subjected to ‘close judicial scrutiny.’” *Flynn*,

⁷ The Respondent discusses *Oliver v. Quarterman*, where a juror discussed the relevant biblical teaching with fellow jurors during punishment deliberations. 541 F.3d 329 (5th Cir. 2008).

475 U.S. at 568. Sparks argues that courtroom personnel openly lobbying for a death sentence is such a practice. If a state sponsored practice does create a threat to the fairness of the trial, then the Court considers whether the practice is “justified by an essential state interest specific to each trial.” *Id.* at 569. The Respondent does not name any essential state interest furthered by Bailiff Moorehead’s homemade syringe tie, nor is one likely one exists.

The Respondent’s assertion that Sparks must prove the jurors were prejudiced by the Bailiff’s actions was also rejected by this Court in *Flynn*. See Respondent’s Brief in Opposition at 15.⁸ The state court and District Court’s decisions both failed to apply the correct legal principles as identified by this Court, and the Respondent’s brief continues to make the same mistake.

The Circuit Court ruled against *Sparks* on this issue by applying the harm analysis mandated by *Brecht v. Abrahamson*, 507 U.S. 619 (1993). *Sparks*, 756 Fed. Appx at 403. However, there is a circuit split concerning whether or not *Brecht*

⁸ In *Flynn* this Court explained:

The Court of Appeals was correct to find that Justice Giannini's assessment of jurors' states of mind cannot be dispositive here. If "a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process," *Estes v. Texas*, [381 U.S. 532, 542-543 \(1965\)](#), little stock need be placed in jurors' claims to the contrary. See *Sheppard v. Maxwell*, [384 U.S. 333, 351-352 \(1966\)](#); *Irvin v. Dowd*, [366 U.S. 717, 728 \(1961\)](#). . . . Whenever a courtroom arrangement is challenged as inherently prejudicial, therefore, the question must be not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether "an unacceptable risk is presented of impermissible factors coming into play," *Williams*, [425 U.S., at 505](#).

Holbrook v. Flynn, 475 U.S. 560, 570 (1986)

applies to this type of claim, and the Respondent cites only the Fifth Circuit decision in *Oliver* to support her view that *Brecht*'s harm analysis is proper. See Respondent's Brief at 13. The Respondent fails to address why the Fifth Circuit failed to apply its own prior precedent from *Brooks v. Dretke*, where the Court found implied bias based upon a state action which "created an intolerable inherent risk of abuse." 418 F.3d 430, 432 (5th Cir. 2005)

Once again, Sparks is able to satisfy all three *Barefoot* criteria as relates to the second question presented for review, and this Court should grant a stay of execution so that Sparks will not be executed while his petition for certiorari remains pending.

Finally, this Court is the proper venue for filing an application for stay of execution because the petition for writ of certiorari is currently pending before this Court, and because Texas law prevents Petitioner Sparks from seeking relief from the state courts while federal review is still pending. First, Texas has held that the trial court cannot withdraw the scheduled execution date in the absence of an active state habeas pleading. *In re State ex rel. Risinger*, 479 S.W.3d 250, 258 (Tex. Crim. App. 2015). Second, Texas will "automatically dismiss writ applications when the applicant also has a writ pending in federal court that relates to the same conviction," unless the applicant has been granted a stay and abet by a federal court to return to state court. See *Ex parte Soffar*, 120 S.W.3d 344, 345 (Tex. Crim. App. 2003); *Ex parte Soffar*, 143 S.W.3d 804 (Tex. Crim. App. 2004). Because the State of Texas

sought an execution date while Sparks' petition for certiorari is still pending, this Court is the proper venue for a stay of execution.

Petitioner Sparks requests that this Court immediately grant him a stay of execution to remain in effect at least until the Court rules on his pending petition for writ of certiorari, and ultimately Petitioner Sparks requests that the Court continue the stay and grant certiorari to address the important constitutional errors underlying his sentence of death.

Respectfully submitted,

/s/ Jonathan Landers

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Court-Appointed Counsel for
Petitioner Sparks

Robert Sparks v. Lorie Davis

Appendix

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Appendix 1 – Order setting Execution Date and Warrant of Execution

CAUSE NO. F08-01020-VJ

THE STATE OF TEXAS	§	IN THE CRIMINAL
VS.	§	DISTRICT COURT NO. 3
ROBERT SPARKS	§	DALLAS COUNTY, TEXAS

ORDER SETTING EXECUTION DATE

The Court has reviewed the State's Motion to Set an Execution Date and finds that the motion should be granted; and whereas

The Defendant, Robert Sparks, was previously sentenced to death by the Court in the presence of his attorneys; and

There being no stays of execution in effect in this case, it is the duty of this Court to set an execution date in the above numbered and styled cause, and the Court now enters the following **ORDER**:

IT IS HEREBY ORDERED that the Defendant, Robert Sparks, who has been adjudged to be guilty of capital murder as charged in the indictment and whose punishment has been assessed by the verdict of the jury and judgment of the Court at Death, shall be kept in custody by the Director of the Texas Department of Criminal Justice, Institutional Division, until the **25th day of September, 2019**, upon which day, at the Texas Department of Criminal Justice, Institutional Division, at some time after the hour of six o'clock p.m., in a room arranged for the purpose of execution, the said Director, acting by and through the executioner designated by said Director, as provided by law, is hereby commanded, ordered and directed to carry out this

ORDER SETTING EXECUTION DATE

Sparks/ose/duplicate original

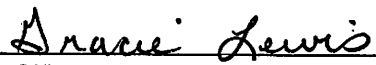
sentence of death by intravenous injection of a substance or substances in a lethal quantity sufficient to cause the death of the said Robert Sparks until the said Robert Sparks is dead. Such procedure shall be determined and supervised by the said Director of the Texas Department of Criminal Justice, Institutional Division.

Within 10 days of the signing of this Order, the Clerk of this Court shall issue and deliver to the Sheriff of Dallas County, Texas, a Warrant of Execution in accordance with this Order, directed to the Director of the Texas Department of Criminal Justice, Institutional Division, at Huntsville, Texas, commanding him, the said Director, to put into execution the Judgment of Death against the said Robert Sparks.

The Sheriff of Dallas County, Texas is hereby ordered, upon receipt of said Warrant of Execution, to deliver said Warrant to the Director of the Department of Criminal Justice, Institutional Division, Huntsville, Texas.

The Clerk of this Court is ordered to forward a copy of this Order to Defendant's counsel, Seth Kretzer, seth@kretzerfirm.com, and Jonathan Landers, jlanders.law@gmail.com, to counsel for the State, Jaclyn O'Connor Lambert, Jaclyn.OConnor@dallascounty.org, and to the Director of the Office of Capital and Forensic Writs, Benjamin Wolff, Benjamin.Wolff@ocfw.texas.gov.

SIGNED this 25th day of June, 2019.



JUDGE GRACIE LEWIS
CRIMINAL DISTRICT COURT NO. 3
DALLAS COUNTY, TEXAS

ORDER SETTING EXECUTION DATE

Sparks/ose/duplicate original

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

WARRANT OF EXECUTION

TO THE HONORABLE DIRECTOR OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, HUNTSVILLE, TEXAS -- GREETINGS:

WHEREAS, there was presented into Court an indictment charging Robert Sparks with the offense of capital murder; and

WHEREAS, in the Criminal District Court No. 3 of Dallas County, Texas, Robert Sparks was duly and legally convicted by a jury of the crime of capital murder upon said indictment and sentenced to death; and the Court having pronounced sentence in the presence of the defendant and his attorneys, as fully appears in the Judgment of said Court entered upon the Minutes of the said Court, as follows, to-wit;

JUDGMENT ATTACHED

WARRANT OF EXECUTION

Sparks.wex



CASE NO. F-0801020-J
INCIDENT NO./TRN: 9108397295

THE STATE OF TEXAS **THIS CASE IS** §
V. **ON APPEAL** §
ROBERT SPARKS §
STATE ID No.: TX04500758 §
IN THE CRIMINAL DISTRICT
COURT #3
DALLAS COUNTY, TEXAS

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: Hon. Robert Francis	Date Judgment Entered: 12/11/2008
Attorney for State: Andy Beach	Attorney for Defendant: Paul Johnson
<u>Offense for which Defendant Convicted:</u> CAPITAL MURDER/MULTI/RE	
<u>Charging Instrument:</u> INDICTMENT	<u>Statute for Offense:</u> 19.03 Penal Code
<u>Date of Offense:</u> 9/15/2007	
<u>Degree of Offense:</u> CAPITAL FELONY	<u>Plea to Offense:</u> NOT GUILTY
<u>Verdict of Jury:</u> GUILTY	<u>Findings on Deadly Weapon:</u> YES, NOT A FIREARM
<u>Plea to 1st Enhancement Paragraph:</u> N/A	<u>Plea to 2nd Enhancement/Habitual Paragraph:</u> N/A
<u>Findings on 1st Enhancement Paragraph:</u> N/A	<u>Findings on 2nd Enhancement/Habitual Paragraph:</u> N/A
<u>Punishment Assessed by:</u> JURY	<u>Date Sentence Imposed:</u> 12-11-08
<u>Date Sentence to Commence:</u>	
<u>Punishment and Place of Confinement:</u> DEATH, CONFINEMENT IN THE INSTITUTIONAL DIVISION UNTIL SENTENCE OF DEATH IS CARRIED OUT.	

THIS SENTENCE SHALL RUN CONCURRENTLY.

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

<u>Fine:</u> \$ N/A	<u>Court Costs:</u> \$ 256.00	<u>Restitution:</u> \$ N/A	<u>Restitution Payable to:</u> <input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below)
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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

From 9/18/2007 to 12/11/2008 From to From to

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

N/A 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 Dallas 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.



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 Dallas County District Clerk Felony Collections Department. 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 Dallas County, Texas on the date the sentence is to commence. Defendant shall be confined in the Dallas County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the Dallas County District Clerk Felony Collections Department. 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 Dallas County District Clerk Felony Collections Department. 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:

DEFENDANT SENTENCED TO DEATH

The Court FINDS Defendant used or exhibited a deadly weapon, namely, A KNIFE, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. TEX. CODE CRIM. PROC. art. 42.12 §3g

DEFENDANT EXCEPTS AND GIVES NOTICE OF APPEAL TO THE COURT OF APPEALS, FIFTH DISTRICT OF TEXAS AT DALLAS

Signed and entered on December 11, 2008

x

Robert Francis
JUDGE PRESIDING

Clerk: D. GODBOLD

JUDGMENT
CERTIFICATE OF THUMBPRINT

THE STATE OF TEXAS

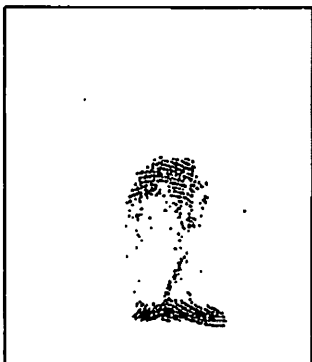
CAUSE NO. F 0801020-J

VS.

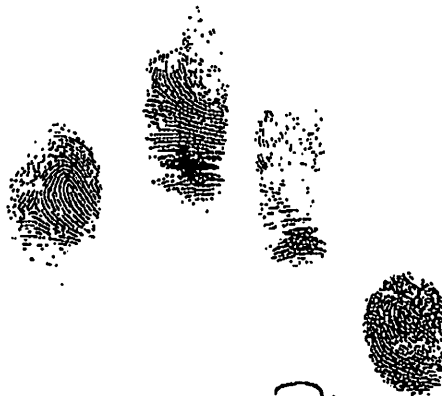
CRIMINAL DISTRICT COURT #3

Robert Sparks

DALLAS COUNTY, TEXAS



RIGHT THUMB



DEFENDANT'S Rt. HAND

THIS IS TO CERTIFY THAT THE FINGERPRINTS ABOVE ARE THE ABOVE-NAMED DEFENDANT'S FINGERPRINTS TAKEN AT THE TIME OF DISPOSITION OF THE ABOVE STYLED AND NUMBERED CAUSE.

DONE IN COURT THIS 4th DAY OF Dec., 2008

J. Garcia #445

BAILIFF/DEPUTY SHERIFF

*INDICATE HERE IF PRINT OTHER THAN DEFENDANT'S RIGHT THUMBPRINT IS PLACED IN BOX:

____ LEFT THUMBPRINT

____ LEFT/RIGHT INDEX FINGER

____ OTHER, _____

SIGNED AND ENTERED ON THIS 4 DAY OF Dec, 2008.

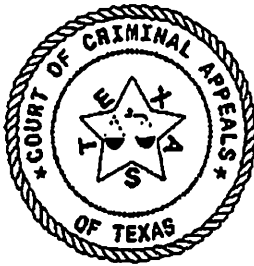
[Signature]
PRESIDING JUDGE

AND WHEREAS, on the 15th day of November, 2010, in trial court No. F08-01020-J, Court of Criminal Appeals No. AP-76,099, the Texas Court of Criminal Appeals issued a mandate affirming the Judgment in *Robert Sparks vs. The State of Texas* as follows, to-wit:

MANDATE ATTACHED ,

WARRANT OF EXECUTION

Sparks.wex



FILED

2010 NOV 16 PM 4:23

[Signature]
CLERK
DEPUTY

TEXAS COURT OF CRIMINAL APPEALS
Austin, Texas

SID# 04500758
THE STATE OF TEXAS,

M A N D A T E

TO THE CRIMINAL DISTRICT COURT # 3 OF DALLAS COUNTY — GREETINGS:

Before our **COURT OF CRIMINAL APPEALS**, on the **OCTOBER 20, 2010**, the cause upon appeal to revise or reverse your Judgment between:

ROBERT SPARKS

VS.

THE STATE OF TEXAS

807 / 713

CCRA NO. AP-76,099

TRIAL COURT NO. F-0801020-J

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 record of the Court below, and the same being considered, because it is the Opinion of this Court that there was no error in the judgment, it is **ORDERED, ADJUDGED AND DECREED** by the Court that the judgment be **AFFIRMED**, 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 November 15, 2010.

LOUISE PEARSON Clerk

[Signature]
Abel Acosta

Chief Deputy Clerk

Minute Page

AND WHEREAS, the Criminal District Court No. 3 of Dallas County, Texas on the 25th day of June, 2019, did enter an Order Setting Execution Date as set forth in the Minutes of said Court, as follows, to-wit:

ORDER SETTING EXECUTION DATE

ATTACHED

WARRANT OF EXECUTION

Sparks.wex

CAUSE NO. F08-01020-VJ

THE STATE OF TEXAS	§	IN THE CRIMINAL
	§	
VS.	§	DISTRICT COURT NO. 3
	§	
ROBERT SPARKS	§	DALLAS COUNTY, TEXAS

ORDER SETTING EXECUTION DATE

The Court has reviewed the State's Motion to Set an Execution Date and finds that the motion should be granted; and whereas

The Defendant, Robert Sparks, was previously sentenced to death by the Court in the presence of his attorneys; and

There being no stays of execution in effect in this case, it is the duty of this Court to set an execution date in the above numbered and styled cause, and the Court now enters the following **ORDER**:

IT IS HEREBY ORDERED that the Defendant, Robert Sparks, who has been adjudged to be guilty of capital murder as charged in the indictment and whose punishment has been assessed by the verdict of the jury and judgment of the Court at Death, shall be kept in custody by the Director of the Texas Department of Criminal Justice, Institutional Division, until the **25th day of September, 2019**, upon which day, at the Texas Department of Criminal Justice, Institutional Division, at some time after the hour of six o'clock p.m., in a room arranged for the purpose of execution, the said Director, acting by and through the executioner designated by said Director, as provided by law, is hereby commanded, ordered and directed to carry out this

ORDER SETTING EXECUTION DATE

Sparks/ose/original

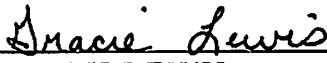
sentence of death by intravenous injection of a substance or substances in a lethal quantity sufficient to cause the death of the said Robert Sparks until the said Robert Sparks is dead. Such procedure shall be determined and supervised by the said Director of the Texas Department of Criminal Justice, Institutional Division.

Within 10 days of the signing of this Order, the Clerk of this Court shall issue and deliver to the Sheriff of Dallas County, Texas, a Warrant of Execution in accordance with this Order, directed to the Director of the Texas Department of Criminal Justice, Institutional Division, at Huntsville, Texas, commanding him, the said Director, to put into execution the Judgment of Death against the said Robert Sparks.

The Sheriff of Dallas County, Texas is hereby ordered, upon receipt of said Warrant of Execution, to deliver said Warrant to the Director of the Department of Criminal Justice, Institutional Division, Huntsville, Texas.

The Clerk of this Court is ordered to forward a copy of this Order to Defendant's counsel, Seth Kretzer, seth@kretzerfirm.com, and Jonathan Landers, jlanders.law@gmail.com, to counsel for the State, Jaclyn O'Connor Lambert, Jaclyn.OConnor@dallascounty.org, and to the Director of the Office of Capital and Forensic Writs, Benjamin Wolff, Benjamin.Wolff@ocfw.texas.gov.

SIGNED this 25th day of June, 2019.



JUDGE GRACIE LEWIS
CRIMINAL DISTRICT COURT NO. 3
DALLAS COUNTY, TEXAS

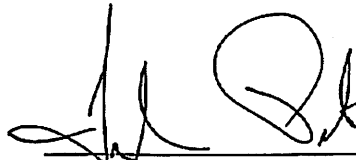
ORDER SETTING EXECUTION DATE

Sparks/ose/original

You are hereby commanded to carry into execution the order of execution herein in accordance with this Warrant for the execution of the sentence of death, and in accordance with the Judgment of this said Court, shown herein, which I certify to be true and correct copies of the original Judgment, Mandate, and Order Setting Execution Date now on file on my office and entered on the Minutes of said Court.

HEREIN FAIL NOT, but due return make of this Warrant showing how you have executed the same.

Given under my hand and seal of the Criminal District Court No. 3 of Dallas County, Texas, on this 2nd day of July, 2019.



FELICIA PITRE, DISTRICT CLERK
DALLAS COUNTY, TEXAS

WARRANT OF EXECUTION

Sparks.wex

SHERIFF'S RETURN

The above and foregoing Warrant came to hand on the ____ day of July A.D. 2019, and immediately upon receipt, said Warrant was taken to the Texas Department of Criminal Justice, Institutional Division, at Huntsville, Texas, and delivered into the hands of the Director of the Texas Department of Criminal Justice, Institutional Division, and from the said Director a receipt was taken for the said Warrant as follows:

"Received from the Sheriff of Dallas County, Texas, a Warrant for the execution of the Death Sentence to be executed upon Robert Sparks in Cause No. F08-01020, in the Criminal District Court No. 3 of Dallas County, Texas."

Date Signed: _____

Director
Texas Department of Criminal Justice
Institutional Division
Huntsville, Texas

which said receipt I now return to the office of the Clerk of the Criminal District Court No. 3 of Dallas County, Texas, this _____ day of July, A.D. 2019.

SHERIFF
DALLAS COUNTY, TEXAS

Appendix 2 – Jury Notes Requesting A.P. Merillat’s Testimony, and Response

- We would also like to see the police interrogate after the arrest?
- Can we have a copy of Plaintiff's + Defendant's exhibit list?
- Can we have Mariot's testimony?

FILED

2008 DEC 10 PM 2:45

DAVEY FITZGERALD
DISTRICT CLERK
DALLAS CO. TEXAS

DORIS GODBOLD DEPUTY

Heather Randall
12/10/08

000487

① The jury has a conflict regarding the substance of Mr. Marlot's testimony pertaining to what restrictions are on Ja 63 prison?

② ~~What would be the effect of the sentence?~~
If sentenced to a life sentence without parole, what would he be classified as?

Heather Randa
12/10/08

FILED

2008 DEC 10 PM 7:23

CLERK
DISTRICT CLERK
JILL S. BULL
DORIS GODBOLD
DEPUTY

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BY MR. BEACH:

Q If this jury answers the two questions sometime this week in such a way that Robert Sparks is sentenced to life in prison without the possibility of patrol, is he gonna be thrown into some kind of 15 foot hole and isolated from the rest of humanity for the rest of his natural life?

A No, he's not.

Q Tell the members of the jury, Mr. Merrilat, anyone sentenced to 50 years on up, which obviously includes a capital murder life without parole, what is their automatic classification coming into the prison system ?

A They're automatically classified as what's called a G-3. In the classification system the numbers preceded by the letter G. Goes from G-1. G-1 being a good inmate --

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QUESTIONS BY MR. BEACH:

Q Mr. Merrilat, individuals classified as G-3 inmates receive that classification which you told us capital murderers without parole, that's what they'd be coming in as , is that correct ?

A It's based upon the length of their sentence, yes, sir.

Q Are G-3 inmates restricted from going to the chow hall with other inmates ?

A No, sir, they're not.

Q Are they restricted from going to the library with other inmates?

A No, sir.

Q Are they restricted from going to school?

A No, they're not.

Q Medical facilities?

A They're not restricted.

Q They get to go to visitation?

A They can go to visitation.

(END OF EXCERPT)

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BY MR. JOHNSON:

Q You said that anybody convicted and given a sentence over 50 years in the penitentiary would automatically qualifies or automatically be a G-3 inmate , is that correct?

A That's correct.

Q That's actually not totally correct, is it? The classification board of the Texas Department of Criminal Justice can look at the prior background, prior incarceration records , prior conduct records of individuals and can raise that classification if they choose to do so, can they not?

A As a matter of fact they will look at his prior history, whether he's been to the penitentiary before. Look at any prior convictions that brought him to the prison system. He's gonna go in as G-3. What, what -- I'm gonna answer. What they look at when they consider his prior past bad acts will be as G-3, if he needs to be housed in a different area of the prison system or have more restrictions put upon him. Doesn't mean he's gonna be a G-4, G-5 or ad seg.

Q Okay. Mr. Merrilat, if we can just try to limit this to question/answer, sir.

A Be glad to.

Q The G-3 classification you told the jury about and Mr. Beach inquired about, you're saying the G-3 is basically

000492

1 unlimited except for armed supervision outside the prison , is
2 that correct ?

3 A Not unlimited access to areas that convicts cannot
4 generally go to. But he is free to come and go from his cell
5 block without restraints, handcuffs or escort.

6 Q But as I just pointed out sir, whether or not you're
7 classified, the minimum classification for a person is G-3 and
8 can go all the way up to an automatic classification of ad seg
9 right off the bat, couldn't it? That's yes or no, sir. Right
10 or wrong?

11 A You're wrong .

12 Q I'm wrong ?

13 A Yes ..

14 Q Couldn't be placed in ad seg?

15 A Very limited circumstances. But the broad way you
16 say it is not correct .

17 Q He could be, couldn't he ?

18 A He could be .

19 Q Could be G-4, couldn't he?

20 A He could be .

21 Q Could be G-5.

22 A Could be .

23 Q So your testimony while ago what I called throwing a
24 skunk over there, you're basically saying is we know what the
25 minimum is, but we have no idea what it's actually gonna be for

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1 Robert Sparks. That's what you're basically saying, isn't it ?

2 A No, you're wrong.

3 MR. JOHNSON: That's all, sir. I'll leave
4 it there.

5 MR. BEACH: May he be excused?

6

7 (End of Excerpt)

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①

The jury has a conflict regarding the substance of Mr. Marlow's testimony regarding what classification the defendant would have in prison if he was sentenced to life without parole.

Heather Landaer
12/10/08

FILED

DEC 10 PM 7:59

MARY FITZSIMMONS
DISTRICT CLERK
DORIS CAMPBELL
CLERK

000495