No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONOVAN JACOB FARR
Petitioner

v.

THE STATE OF TEXAS
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

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DONOVAN JACOB FARR

QUESTIONS PRESENTED

Did the state court disregard this Court's precedent by upholding the constitutional validity of Petitioner's guilty plea – despite recognizing the trial court's findings that the undisputed facts did not satisfy an essential element of the charged offense, disregarding this Court's precedent that a plea based on misunderstanding of the offense elements and misinformation about the punishment range violates due process and the right to effective assistance of counsel – by justifying its decision on the dismissal of lesser charges as part of the plea agreement and the possibility of conviction upon refiling or amending the charge to an uncharged lesser offense, while failing to address the incorrect punishment information provided by both defense counsel and the trial court, where Petitioner affirmatively demonstrated that he would not have pleaded guilty if accurately informed.

PARTIES TO THE PROCEEDINGS

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TABLE OF CONTENTS

Table of Authorities

Cases

Federal Constitutional Provisions

Federal Statutes

State Statutes

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINIONS AND ORDERS ENTERED IN PETITIONER'S CASE

A. Texas Court of Criminal Appeals' order denying Applicant's Second Amended Application for Writ of Habeas Corpus. *Ex parte Farr*, 2025 WL 325862 (Tex. Crim. App. Jan. 29, 2025) (per curiam) (not designated for publication). Appendix A.

B. Trial Court's Findings of Facts, Conclusions of Law, and Order Recommending Relief, *State of Texas v. Donovan Jacob Farr*, Cause No. 1675614-D, 209th Judicial District Court, Oct. 31, 2024, unreported. Appendix B.

C. Texas Court of Criminal Appeals' denial of Applicant's Suggestion to Reconsider on the Court's own Motion, Mar. 26, 2025, unreported. Appendix C.

D. Opinion from the Texas Court of Appeals affirming the trial court's judgment. *Farr v. State*, No. 01-22-00318-CR, 2023 WL 4937498 (Tex. App. – Houston [1st Dist.] Aug. 3, 2023, no pet.) (mem. op., not designed for publication). Appendix D.

E. 209th Judicial District Court's Judgment, Apr. 1, 2022. Appendix E.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

On January 29, 2025, the Texas Court of Criminal Appeals (hereinafter "CCA") denied relief on Applicant's Second Amended Application for Writ of Habeas Corpus. This Court has jurisdiction under 28 U.S.C.A. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

SIXTH AMENDMENT

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

U.S. CONST. AMEND. VI.

FOURTEENTH AMENDMENT

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

U.S. CONST. AMEND. XIV § 1.

STATEMENT OF THE CASE

The applicant, Donovan Farr, is confined pursuant to the judgment and sentence of the 209th District Court of Harris County, Texas, in cause number 1675614. *See* Trial Court's Findings of Facts, Conclusions of Law, and Order Recommending Relief, *State of Texas v. Donovan Jacob Farr*, Cause No. 1675614-D, 209th Judicial District Court, Oct. 31, 2024, unreported. Appendix B, at 1[1].

On September 9, 2020, a grand jury indicted the applicant with tampering with a governmental record. Finding 2. The indictment alleged an offense under TEX. PENAL CODE § 37.10 (a)(5)1. Finding 3. The trial court, Judge Brian Warren presiding, appointed Wayne Heller to represent the applicant in the primary case. Finding 4. Judge Warren also appointed Heller to represent the applicant in two unrelated cases: cause numbers 1675144 (state jail felony theft) and 1688791 (third-degree felon in possession of a firearm). Finding 5.

Without being informed that the undisputed evidence available to the prosecution was insufficient to sustain a conviction for the offense charged, on January 5, 2021, Farr pleaded guilty, without an agreed recommendation on punishment, to tampering with a government record as charged in the indictment in the primary case. *Id.* at 6. The State dismissed cause numbers 1675144 (theft) and 1688791 (felon in possession of a firearm) in exchange for the applicant's guilty plea in the primary case. Finding 7. Judge Warren withheld a finding of guilt and placed

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[1] The Trial Court's Findings will be referred to as "Finding(s)," and the number cited will reference the finding number.

the applicant on a four (4) year deferred adjudication community supervision. Finding 8.

On January 4, 2022, the State filed an Amended Supplemental #2 Motion to Adjudicate Guilt, alleging that the Petitioner violated the terms and conditions of his deferred adjudication community supervision by committing two offenses: Assault of a Public Servant and Fraudulent Use of Identifying Information. Finding 9. Judge Warren appointed Neil Krugh to represent Farr in the motion to adjudicate proceeding. Finding 10. Judge Warren also appointed Krug to represent Farr in cause numbers 1752958 (Fraudulent Use of Identifying Information) and 1737445 (Assault of a Public Servant). Finding 11. On April 1, 2022, following a hearing on the State's motion to adjudicate guilt, in which the State only presented evidence on the fraudulent use or possession of another's identifying information to show that Petitioner violated the terms of his community supervision, Judge Warren sentenced the applicant to ten (10) years confinement in the Texas Department of Criminal Justice—Institutional Division. Finding 11; 3 R.R. at 6, 44; C.R. at 86.

The First Court of Appeals affirmed the Petitioner's conviction on August 3, 2023, and issued its mandate on October 18, 2023. *Farr v. State,* No. 01-22-00318-CR, 2023 WL 4937498 (Tex. App. – Houston [1st Dist.] Aug. 3, 2023, pet. ref'd) (mem. op., not designated for publication).

The Court of Criminal Appeals ("CCA") dismissed three prior writ applications, in cause nos. 1675614-A, 1675614-B, and 1675614-C. *See* Finding 14.

On March 21, 2024, the applicant filed a *pro se* application for writ of habeas corpus. Finding 15. On March 22, 2024, Judge Warren referred the writ to an associate judge for resolution. Finding 16. On May 7, 2024, Judge Warren appointed habeas counsel to represent the applicant in the instant writ. Finding 18. On October 9, 2024, habeas counsel filed a second amended application for writ of habeas corpus alleging four grounds for relief: (1) ineffective assistance of counsel at trial; (2) absolute innocence; (3) actual innocence; and (4) ineffective assistance of counsel at the motion to adjudicate hearing. Finding 26.

On October 28, 2024, the trial court adopted the State's Amended Proposed Findings of Fact, Conclusions of Law and Order recommending relief based on the ineffective assistance of counsel prior to his guilty plea. On January 29, 2025, the CCA issued an order denying relief, with Judge Newell dissenting. On March 3, 2025, Petitioner filed a Suggestion to Reconsider on the Court's Own Motion, which was denied by the CCA on March 26, 2025.

REASON FOR GRANTING THE PETITION

The state court disregard this Court's precedent by upholding the constitutional validity of Petitioner's guilty plea – despite recognizing the trial court's findings that the undisputed facts did not satisfy an essential element of the charged offense, disregarding this Court's precedent that a plea based on misunderstanding of the offense elements and misinformation about the punishment range violates due process and the right to effective assistance of counsel – by justifying its decision on the dismissal of lesser charges as part of the plea agreement and the possibility of conviction upon refiling or amending the charge to an uncharged lesser offense, while failing to address the incorrect punishment information provided by both defense counsel and the trial court, where Petitioner affirmatively demonstrated that he would not have pleaded guilty if accurately informed.

This case presents a compelling reason for this Court's intervention. It raises a significant constitutional question about the proper scope of state court discretion when federal constitutional rights are at stake. The Texas Court of Criminal Appeals' decision undermines the uniform application of federal due process standards and invites arbitrary enforcement of criminal law by permitting convictions unsupported by the necessary elements of the charged offense and based on misinformation provided by counsel and the trial court regarding the applicable punishment range.

The state court erred by upholding the constitutional validity of Petitioner's guilty plea despite undisputed facts demonstrating that the plea was involuntary and the result of ineffective assistance of counsel. The court's reasoning directly contravenes established United States Supreme Court precedent and disregards critical constitutional safeguards.

I. Governing Legal Principles

A. Requirements for a Constitutionally Valid Guilty Plea

A guilty plea is constitutionally valid only if it is "'voluntary'" and "'intelligent.'" *Bousley v. United States*, 523 U.S. 614 (1998) (quoting *Brady v. United States,* 397 U.S. 742, 748 (1970)). This Court has "long held that a plea does not qualify as intelligent unless a criminal defendant first receives 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" *Id.* (citing *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)); *Hi v. Morgan*, 426 U.S. 637 (1976). Moreover, in Boykin, the United States Supreme Court indicated that, if a conviction was based on a plea of guilty, the record must show that the defendant understood, among other things, the permissible range of sentences applicable to the charge he faces. *Boykin v. Alabama*, 359 U.S. 238, 244 n. 7 (1969).

In pleading guilty, "a defendant waives his federal constitutional rights against self-incrimination, the right to a speedy and public trial by jury, and the right to confrontation." *Boykin*, 395 U.S. at 242-43. A defendant's waiver of those rights "must be not only voluntary but also a knowing, intelligent act done with sufficient awareness of the relevant circumstances and likely consequences." *Brady*, 397 U.S. at 748. "[I]f a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void." *McCarthy v. United States*, 394 U.S. 459, 466 (1969).

B. Standard for Ineffective Assistance of Counsel in Plea Bargain Cases

Defense counsel must provide accurate advice regarding the law and the consequences of a plea. *See Padilla v. Kentucky*, 559 U.S. 356 (2010). Where counsel's

performance falls below an objective standard of reasonableness, and there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty, the plea must be set aside. *Hill v. Lockhart*, 474 U.S. 52, 56-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

II. State Court Errors

A. Failure to Find Petitioner's Misunderstanding of the Essential Elements of the Offense Renders his Plea Constitutionally Invalid

Petitioner's indictment alleged that the applicant "unlawfully, intentionally and knowingly present[ed] and use[d] a license, to-wit: Texas Driver's License attached hereto as Exhibit A, a governmental record, with knowledge of its falsity and the actions of the [Petitioner] was done with the intent to defraud and harm another." Finding 2. The indictment alleged an offense under TEX. PENAL CODE § 37.10 (a)(5). Finding 3.

In this case, the offense report alleged the Petitioner used/presented a fake Texas Driver's License – a document created to look like an official Texas Driver's License – in order to purchase a vehicle. Appl. Ex. 5.[2] After Petitioner filed his writ, the Prosecutor spoke with the arresting officer and confirmed that the license the Petitioner used was not a governmental record. Finding 42 n. 2. 34. Therefore, the identifying information was not a Governmental Record under the Penal Code provision with which the Applicant was charged. *Alfaro-Jimenez v. State*, 577 S.W.3d

[2] Appl. Ex. refers to the exhibits filed by the Petitioner in the trial court in support of his writ application.

240 (Tex. Crim. App. 2019) is on point. In that case, the Appellant carried a fake social security card in his wallet and admitted using it to get work. But to convict the Appellant of tampering with a governmental record under the theory of liability authorized by the indictment in that case, the State had to prove that the Appellant had possessed or presented a real social security card, which it failed to do. By indicting the Appellant for tampering with a governmental record under § 37.10 (a)(4) and § 37.10(a)(5), the State was required to prove that the social security card at issue was an actual governmental record, not merely that Appellant intended the social security card be taken as a genuine governmental record. *Id.* at 245. Therefore, the CCA reversed the judgment of the court of appeals and rendered an acquittal, holding that the evidence was insufficient to support the conviction. *Id.* at 247.

Farr provided an affidavit stating,

> My attorney never informed me that because the State indicted me for tampering with a governmental record under § 37.10(a)(5), the State was required to prove that the identification at issue was an actual governmental record, not merely that I intended the identification to be taken as a genuine governmental record. I was unaware that the evidence in my case was legally insufficient to support a conviction. Additionally, if I had been informed of the correct punishment range and if my attorney had explained the law in relation to the facts, I would not have pleaded guilty but would have proceeded to trial.

Appl. Ex. 1. Additionally, Heller's declaration stated in relevant part,

> In the underlying case, the allegation was that Farr tried to buy the vehicle using a fraudulent ID containing someone else's information and Farr's picture. When I advised Farr to plead guilty, I was unaware that the ID he used did qualify as a governmental record under the Penal Code provision he was charged with. I was unaware of the case, *Alfaro-Jimenez v. State*, 577 S.W.3d 240 (Tex. Crim. App. 2019). I did not research the requirements for conviction under the statute he was charged. If I had known the State had legally insufficient evidence to

> convict him under the provision he was charged with, I would not have advised him to plead guilty to the offense.

Appl. Ex. 4.

In *Bousley*, this Court held that a guilty plea based on a misunderstanding of the essential elements of the crime charged is constitutionally invalid. 523 U.S. at 619. When neither the defendant, his counsel, nor the trial court correctly understands the essential elements of the crime with which the defendant is charged, the defendant's guilty plea is invalid under the due process clause. *See id.* at 618-19.

Additionally, in *Henderson v. Morgan*, 426 U.S. 637 (1976), the Supreme Court affirmed the grant of a writ of habeas corpus in favor of a state-court defendant who pleaded guilty to second-degree murder. The writ was granted on the ground that the defendant had not entered into the plea with knowledge that intent to kill was an element of the crime. The federal district court held an evidentiary hearing and found as a fact that the defendant had never been advised, either by the trial judge or by counsel, that intent to kill was an element of second-degree murder. This Court held that since the respondent did not receive adequate notice of the offense to which he pleaded guilty, his plea was involuntary, and the judgment of conviction was entered without due process. *Id.*

In *Marshall v. Lonberger*, 459 U.S. 422, 437 (1983), this Court observed that, "[u]nder *Henderson*, [the habeas corpus petitioner] must be presumed to have been informed, either by his lawyers or at one of the presentencing proceedings, of the charges on which he was indicted."

In *Bradshaw v. Stumpf*, 545 U.S. 175 (2005), this Court again ruled in a habeas corpus case that the defendant's guilty plea had been entered with knowledge of the nature and elements of the crime. In *Bradshaw*, in an Ohio state court, Stumpf had pleaded guilty to aggravated murder and was sentenced to death. He and another man, Wesley, were involved in the shooting murder, but only one was the actual shooter. The prosecution's theory against Stumpf was that he was the actual shooter. After Stumpf pleaded guilty, Wesley was tried on the prosecution theory that he (not Stumpf) was the actual shooter. Wesley was convicted but was not sentenced to death. Stumpf then moved to withdraw his guilty plea or vacate his death sentence. The trial court denied the motion and the Ohio state appellate courts affirmed.

Stumpf filed a habeas corpus petition in the federal district court, which denied the writ but granted permission to appeal. A split panel of the Court of Appeals for the Sixth Circuit reversed, concluding (as relevant here) that Stumpf had not understood when he entered the guilty plea that specific intent to cause death is a necessary element of the crime of aggravated murder. *Stumpf v. Mitchell*, 367 F.3d 594, 596 (6th Cir.2004) (Stumpf's guilty plea was "unknowing and involuntary because he was manifestly not aware that specific intent was an element of the crime to which he pleaded guilty").

The Supreme Court reversed, upholding the plea. Noting that it had "never held that the judge must himself explain the elements of each charge to the defendant on the record," the Court observed that, at the plea hearing, Stumpf's "attorneys represented on the record that they had explained to their client the elements of the

aggravated murder charge," and "Stumpf himself then confirmed that this representation was true." 545 U.S. at 183. Citing *Henderson*, the Court remarked that the constitutional requirements for a guilty plea can be met "where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel." *Id.*

However, the case at bar is unlike *Bradshaw v. Stumpf*, where at the plea hearing, the defendant's lawyer represented that he had previously informed the defendant of elements of the charge, and *Stumpf* confirmed this representation was true. 545 U.S. at 183. In Petitioner's case, his lawyer admitted that he did not understand the essential element of the crime charged, that is, what qualifies as a governmental record; therefore, it was not explained to Farr. Appl. Ex. 4.

B. Failure to Address the Misinformation Provided to Petitioner by Both Defense Counsel and the Trial Court Regarding the Punishment Range

The state court disregarded this Court's precedents requiring that guilty pleas be entered knowingly, voluntarily, and intelligently, and guaranteeing effective assistance of counsel during plea negotiations, when it denied relief despite the petitioner's plea being induced by incorrect advice from both his attorney and the trial court about the applicable punishment range, and where petitioner would not have pleaded guilty had he been accurately informed. This CCA's order and the trial court's findings failed to address the Petitioner's allegation that Heller was ineffective for misinforming Petitioner about his punishment range at the time he entered his guilty plea in this case.

The misinformation is undisputed and documented in the record. Petitioner's written court admonishments stated,

> **If convicted, you face the following range of punishment:**
>
> ☒ **Second Degree Felony Enhanced with One Prior Felony Conviction:** a term of life or any term of not more than 99 years of less than 5 years in the Correctional Institutions Division of the Texas Department of Criminal Justice, and, in addition, a fine not to exceed $10,000.00 may be assessed.

C.R. at 22. The written admonishments were incorrect. The Petitioner was charged with Second-Degree Felony. The Indictment alleged:

> **IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:**
>
> The duly organized Grand Jury of Harris County, Texas, presents in the District Court of Harris County, Texas, that in Harris County, Texas, **DONOVAN JACOB FARR**, hereafter styled the Defendant, heretofore on or about **May 16, 2020**, did then and there unlawfully, intentional and knowingly present and use a license, to-wit: Texas Driver's License attached hereto as Exhibit A, a governmental record, with knowledge of its falsity and the actions of the defendant was done with the intent to defraud and harm another.

C.R. at 13. The Indictment does not allege any enhancements, and the Judgment correctly reflects that the offense was not enhanced. C.R. at 10, 31, 53. In his affidavit, Heller admits he advised Petitioner he was enhanced when he was not. Appl. Ex. 4. Attorney Heller's declaration states in relevant part,

> I mistakenly informed Mr. Farr that his charge was enhanced with his prior felony conviction in Cause No. 1519608. The problem is that I was mistaken when I informed him of the enhancement. As I have subsequently learned by reviewing the indictment in this case, the instant charge was not enhanced. My oversight at the time was compounded by the same mistake being made by the Clerk approving the paperwork for this plea, ADA Raine, and Judge Warren. None of us noticed that contrary to what the plea admonishments set out, the indictment was not, in fact, enhanced.

Id. The trial court found Heller's declaration to be credible. Finding 28.

Applicant pleaded guilty to receive deferred adjudication based on the misadvice of counsel and the Court that he was facing up to life in prison if he proceeded to trial, when the offense charged was actually a second-degree felony punishable by a maximum of twenty years in prison. *See* Appl. Ex. 1.

When a defendant enters a guilty plea, he waives many constitutional rights, including the privilege against self-incrimination, the right to a trial and the right to confront witnesses. *Boykin*, 395 U.S. at 243. Such waivers are never presumed from a silent record. *Id.* Here we do not have a silent record. We have a record indicating that the waiver of these rights was based on incorrect information from the court, confirmed by the defense attorney.

Further, incorrect admonishments of the range of punishment deny due process of law under the Texas and U.S. Constitutions because they deprive the appellant of knowledge regarding the nature of the charges against him. This is a Sixth Amendment and due process violation because the defense attorney's advice regarding what will usually be one of the most important facts influencing the guilty plea is incorrect: the punishment range. How can there be a knowing and voluntary plea when the admonishments are blatantly not in compliance with the governing law? How can we presume that a defendant was aware of the consequences of his plea and not misled when every authority in the criminal justice system, including the trial judge, prosecutor who signed off on the plea paperwork, and the defense attorney gave him incorrect advice, and thus deprived him of correct information needed to make an informed choice of whether to waive his constitutional rights? Farr was

expressly, materially, and unanimously misinformed. Petitioner was facing one-fifth of the maximum punishment he thought he was facing (20 years in prison versus 99 years or life in prison). Even less when you consider that if the State were to amend and refile charging Petitioner with one of the State Jail Felony offenses the evidence could potentially support, instead of the offense Petitioner pleaded guilty to which is not supported by the evidence, the punishment range would have been 6 months to 2 years in prison. one-fiftieth the punishment range he thought he was facing.[3]

This Court has long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel. *Padilla v. Kentucky*, 559 U.S. 356 (2010). A guilty plea must satisfy constitutional due process standards, including that it be knowingly, intelligently, and voluntarily entered. The United States Supreme Court has explicitly held that a defendant's guilty plea violates due process when it is based on misinformation or misunderstanding about the punishment range applicable to the charge. In *Boykin*, this Court established that a valid guilty plea requires a full understanding of "what the plea connotes and of its consequence." 395 U.S. at 244. Likewise, the Court has held that a plea cannot be knowing and voluntary unless informed of the "likely consequences." *Brady*, 397 U.S. at 748.

Applicant provided an unsworn declaration stating, "if [he] had been informed of the correct punishment range and if [his] attorney had explained the law in relation

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[3] *See Benavides v. State*, 680 S.W.2d 899, 900-01 (Tex. App. – Houston [1st Dist.] 1984, no pet.) (Cohen, J., dissenting).

to the facts, [he] would not have pleaded guilty but would have proceeded to trial." App. Ex. 1. Therefore, Petitioner satisfied both requirements under *Hill* and *Strickland,* and relief was warranted based on the ineffective assistance of counsel. Additionally, under established Supreme Court precedent, a defendant's guilty plea entered based on misinformation about the potential punishment range violates due process and must be set aside as constitutionally invalid.

C. Improper Reliance on Dismissal of Lesser Charges as Part of the Plea Bargain and Potential of Refiling or Amending to Charge Petitioner with a Lesser Offense to Deny Relief

The CCA improperly relied on the dismissal of lesser charges as part of the plea bargain and potential of refiling or amending to charge petitioner with a lesser offense to support its finding that Petitioner did not show (a) that defense counsel should have advised him that the state could not prove that he used an actual governmental record, or (b) that if counsel had done so, petitioner would not have pleaded guilty and insisted on going to trial.

Petitioner proved that defense counsel should have advised him that the State could not prove that he used an actual governmental record. Petitioner provided an unsworn declaration from trial counsel admitting that he was not aware that the ID Petitioner used did not qualify as a governmental record under the penal code provision, and he was not aware of the *Alfonso-Jiminez* case. He further admitted that he did not research the requirements for conviction under the statute and that if he had known the undisputed evidence was insufficient to convict him under the provision he was charged with, he would not have advised him to plead guilty. Appl.

Ex. 4. The trial court later found Heller's declaration credible. Finding 28. Additionally, Petitioner provided an unsworn declaration stating that he would not have pleaded guilty had he known the correct punishment range and understood the law applicable to his case. Appl. Ex. 1.

Also, Petitioner proved that if counsel had advised him that the State could not prove that he used an actual governmental record, he would have pleaded not guilty and insisted on going to trial. He provided an unsworn declaration stating that he would not have pleaded guilty but would have proceeded to trial had Heller explained the law in relation to the facts. *See* Appl. Ex. 1. Additionally, Heller admitted that if he had known the State's evidence was legally insufficient to convict Farr as charged in the indictment, he would not have advised Farr to plead guilty. *See* Appl. Ex. 4.

The CCA provided the following as reasons why Farr did not prove that he would not have pleaded guilty:

1. The State dismissed two pending felonies in exchange for Petitioner's guilty plea in this case.

Petitioner's two unrelated cases were cause numbers 1675144 (state jail felony theft) and 1688791 (third-degree felon in possession of a firearm). *See* Finding 5. Farr was indicted under TEX. PENAL CODE § 37.10(a)(5), which is a third-degree felony unless the actor's intent is to defraud or harm another, in which event the offense is a second-degree felony. TEX. PENAL CODE § 37.10(c)(2)(A); *see also* Finding 40. The State indicted Applicant alleging he intended to defraud or harm another making the offense alleged a second-degree felony. Therefore, Petitioner pleaded guilty to the highest-level offense out of the three pending charges without knowledge of the

elements required for that conviction and that there was legally insufficient evidence to convict and based on misinformation regarding the punishment range.

2. The State could amend or refile the indictment.

3. Petitioner could have been convicted under other statutory provisions.

In support of this assertion, the Court cites:

a. TEX. PENAL CODE § 37.10(a)(2) (a person commits an offense if he "makes, presents, or uses any record, . . . with knowledge of its falsity and with intent that it be taken as a genuine governmental record.").

An offense under TEX. PENAL CODE § 37.10(c)(1), assuming the State proved Farr intended to defraud or harm another, is a state jail felony.

b. TEX. PENAL CODE § 32.51(b) (a person commits an offense if the person, with the intent to harm or defraud another, possesses or uses an item of identifying information of another person without the other person's consent).

Similarly, an offense under TEX. PENAL CODE § 32.51(c)(1), when the number of items obtained, possessed, transferred, or used is less than five, is a state jail felony.

Petitioner was indicted under TEX. PENAL CODE § 37.10(a)(5), alleging an intent to defraud or harm another, making the offense alleged a second-degree felony.

Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "'was within the range of competence demanded of attorneys in criminal cases.'" *Hill*, 474 U.S. at 56 (citing *McMann v. Richardson*, 397 U.S. 759, 771 (1970)).

The state court's justification for rejecting Petitioner's claim—that other charges were dismissed and alternative charges could have been brought—fails to withstand scrutiny. Petitioner pleaded guilty to a second-degree felony, the highest of his pending charges, based on misunderstanding the essential element necessary for conviction, and the applicable punishment range. The alternative offenses cited by the court (§§ 37.10(a)(2), 32.51(b)) were state jail felonies, significantly lesser charges. It defies logic and credibility to assert that Petitioner knowingly and voluntarily pleaded guilty to a higher-degree offense when legally sufficient evidence existed only for lesser offenses. Rather, this scenario underscores Petitioner's assertion that his plea was made without full knowledge and understanding of the charged offense and its evidentiary sufficiency.

In *Hill v. Lockhart*, after establishing that *Strickland* applies to challenges to guilty pleas based on ineffective assistance of counsel, the Court held that the prejudice prong "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." 474 U.S. at 58-59. Thus, when the defendant asserts he would not have pleaded guilty if counsel had advised him correctly, "to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* In *Hill*, this Court found that the Petitioner failed to allege in his habeas petition that, had counsel correctly informed him about his parole eligibility date, he would have pleaded not guilty and insisted on going to trial; therefore, he "failed to allege the kind of 'prejudice'

necessary to satisfy the second half of the *Strickland v. Washington*, test. *Id.* at 60. In contrast, in this case, Petitioner's declaration submitted as evidence in this case confirmed that had Petitioner been correctly informed of both the essential elements of the charged offense and the accurate punishment range, he would not have entered a guilty plea. Appl. Ex. 1.

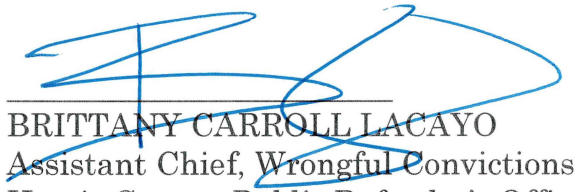
III. Conclusion

The state court clearly erred by disregarding established Supreme Court precedent, which holds that a guilty plea based on a misunderstanding of the essential elements of the charged offense and misinformation from both defense counsel and the trial court regarding the applicable punishment range violates due process and the constitutional right to effective assistance of counsel. The state court improperly upheld the constitutional validity of Petitioner's guilty plea, despite explicitly recognizing that the undisputed facts did not satisfy an essential element of the offense as charged. Instead, the court justified its decision solely on the grounds that other charges were dismissed as part of the plea agreement and that the underlying facts could have supported conviction for an uncharged lesser offense. Furthermore, the state court entirely failed to address the critical issue of the incorrect punishment range provided to Petitioner by his attorney and the trial court. This misinformation directly influenced Petitioner's decision to plead guilty. Had Petitioner been correctly informed of both the essential elements of the charged offense and the accurate punishment range, he would not have entered a guilty plea. Consequently, the state court's holding conflicts directly with settled constitutional

requirements, rendering the plea involuntary and invalid under established Supreme Court jurisprudence.

For the foregoing reasons, this Court should grant certiorari to review the judgment of the Texas Court of Criminal Appeals.

Respectfully submitted,



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ATTORNEY FOR PETITIONER,
DONOVAN JACOB FARR

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONOVAN JACOB FARR
Petitioner

v.

THE STATE OF TEXAS
Respondent

APPENDIX

APPENDICES – TABLE OF CONTENTS

1. Texas Court of Criminal Appeals' order denying Applicant's Second Amended Application for Writ of Habeas Corpus. *Ex parte Farr*, 2025 WL 325862 (Tex. Crim. App. Jan. 29, 2025) (per curiam) (not designated for publication).
2. Trial Court's Findings of Facts, Conclusions of Law, and Order Recommending Relief, *State of Texas v. Donovan Jacob Farr*, Cause No. 1675614-D, 209th Judicial District Court, Oct. 31, 2024.
3. Texas Court of Criminal Appeals' denial of Applicant's Suggestion to Reconsider on the Courts own Motion, Mar. 26, 2025.
4. Opinion from the Texas Court of Appeals affirming the trial court's judgment. *Farr v. State*, No. 01-22-00318-CR, 2023 WL 4937498 (Tex. App. – Houston [1st Dist.] Aug. 3, 2023, no pet.) (mem. op., not designed for publication).

5. 209th Judicial District Court's Judgment, Apr. 1, 2022.

Appendix A

Texas Court of Criminal Appeals' order denying Applicant's Second Amended Application for Writ of Habeas Corpus. *Ex parte Farr*, 2025 WL 325862 (Tex. Crim. App. Jan. 29, 2025) (per curiam) (not designated for publication)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-94,318-04

EX PARTE DONOVAN JACOB FARR, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1675614-D IN THE 209TH DISTRICT COURT
HARRIS COUNTY

***Per curiam.* NEWELL, J., dissented.**

ORDER

Applicant pleaded guilty to tampering with a governmental record and was placed on four years' deferred adjudication community supervision. Later, finding that Applicant had violated the terms of community supervision, the trial court adjudicated Applicant's guilt and sentenced him to ten years' imprisonment. The First Court of Appeals affirmed his conviction. *Farr v. State,* No. 01-22-00318-CR (Tex App.–Houston[1st], August 3, 2023, no pet.). Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

The trial court has entered findings of fact and conclusions of law. The court recommends granting relief on Applicant's allegation that he would not have pleaded guilty if defense counsel had

informed him that the State was unable to prove an element of the charged offense. *See Alfaro-Jimenez v. State,* 577 S.W.3d 240, 245 (Tex. Crim. App. 2019) (finding legally insufficient evidence because, by indicting a defendant under Texas Penal Code section 37.10(a)(5), the State was required to prove that the record at issue was an actual governmental record, not merely that the defendant intended the record be taken as a genuine governmental record). However, the trial court also recognizes that the State dismissed two pending felonies in exchange for Applicant's guilty plea in this case.

If defense counsel had advised Applicant that the State could not prove an element of the charged offense, professionally reasonable counsel also would have advised Applicant that the State could amend or refile the indictment. *Cf. United States v. Goodwin,* 457 U.S. 368, 381 (1982) (in the course of preparing for trial, the prosecutor's assessment of the case may fluctuate as additional evidence is uncovered); *see also Ex parte Thompson,* 179 S.W.3d 549, 560 (Tex. Crim. App. 2005) ("if a defendant hypothesizes a different strategy or move by his pawn or queen, the State would have altered its strategy and made a different move with its chess pieces as well."). Professionally reasonable defense counsel would have discovered the potential evidentiary problem, but given the facts of the case, counsel would still have advised Applicant that the State could amend the indictment and prove its case.

Even if the State had been unable to prove an element of the offense, the facts of the case supported Applicant's guilt under other statutory provisions. *See* TEX. PENAL CODE § 37.10(a)(2) (a person commits an offense if he "makes, presents, or uses any record, . . . with knowledge of its falsity and with intent that it be taken as a genuine governmental record."); TEX. PENAL CODE § 32.51(b) (a person commits an offense if the person, with the intent to harm or defraud another,

possesses or uses an item of identifying information of another person without the other person's consent).

Applicant has not shown that defense counsel should have advised him that the State could not prove that he used an actual governmental record, or that if counsel had done so, Applicant would have pleaded not guilty and insisted on going to trial. *See Ex parte Barnaby,* 475 S.W.3d 316, 324 (Tex. Crim. App. 2015). Therefore, Applicant has not shown ineffective assistance of counsel.

Based on this Court's independent review of the entire record, relief is denied.

Filed: JANUARY 29, 2025
Do not publish

Appendix B

Trial Court's Findings of Facts, Conclusions of Law, and Order Recommending Relief, *State of Texas v. Donovan Jacob Farr*, Cause No. 1675614-D, 209th Judicial District Court, Oct. 31, 2024, unreported.

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CAUSE NO. 1675614010 1D

EX PARTE	§	IN THE 209th DISTRICT COURT
	§	OF
DONOVAN FARR, Applicant	§	HARRIS COUNTY, TEXAS

STATE'S AMENDED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Court has considered the second amended application for writ of habeas corpus, the affidavit and unsworn declaration of Wayne Heller, the affidavit of Neil Krugh, and official court records in the above-captioned cause and cause numbers 1675614, 1675144, 1688791, 1713802, 1723393, 1737445, and 1752958. The Court finds that there are no controverted, previously unresolved facts material to the legality of the applicant's confinement which require an evidentiary hearing and recommends that the Court of Criminal Appeals grant relief based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The applicant, Donovan Farr, is confined pursuant to the judgment and sentence of the 209th District Court of Harris County, Texas, in cause number 1675614(the primary case).

2. On September 9, 2020, a grand jury indicted the applicant with tampering with a governmental record. Specifically, the indictment alleged that the applicant "unlawfully, intentionally and knowingly present and use a license, to-wit: Texas Driver's License attached hereto as Exhibit A, a governmental record, with knowledge of its falsity and the actions of the [applicant] was done with the intent to defraud and harm another."

Certified Document Number: 117313977 - Page 1 of 10

3. The indictment alleged an offense under Tex. Penal Code § 37.10 (a)(5)[1].

4. The trial court, Judge Brian Warren presiding, appointed Wayne Heller to represent the applicant in the primary case.

5. Judge Warren also appointed Heller to represent the applicant in two un-related cases: cause numbers 1675144 (state jail felony theft) and 1688791 (third degree felon in possession of a firearm).

6. On January 5, 2021, the applicant pled guilty, without an agreed recommendation on punishment, to tampering with a government record as charged in the indictment in the primary case.

7. The State dismissed cause numbers 1675144 (theft) and 1688791 (felon in possession of a firearm) in exchange for the applicant's guilty plea in the primary case. *Applicant's Exhibit "4", Unsworn Declaration of Wayne Heller.*

8. Judge Warren withheld a finding of guilt and placed the applicant on a four (4) year deferred adjudication community supervision.

9. On January 4, 2022, the State filed an Amended Supplemental #2 Motion to Adjudicate Guilt alleging that the applicant violated the terms and conditions of his deferred adjudication community supervision by committing two offenses: Assault of a Public Servant and Fraudulent Use of Identifying Information.

10. Judge Warren appointed Neil Krugh to represent the applicant in the motion to adjudicate proceeding.

11. Judge Warren also appointed Krug to represent the applicant in cause numbers 1752958 (Fraudulent Use of Identifying Information) and 1737445 (Assault of a Public Servant).

12. On April 1, 2022, following a hearing on the State's motion to adjudicate guilt, Judge Warren sentenced the applicant to ten (10) years confinement in the Texas Department of Criminal Justice—Institutional Division.

13. The First Court of Appeals affirmed the applicant's conviction on August 3, 2023, and issued its mandate on October 18, 2023. *Farr v. State*, No. 01-22-

[1] Unless otherwise indicated, any reference to § 37.10 refers to Tex. Penal Code § 37.10.

Certified Document Number: 117313977 - Page 2 of 10

00318-CR, 2023 WL 4937498 (Tex. App.—Houston [1st Dist.] August 3, 2023, pet. ref'd) (mem. op., not designated for publication).

14. The Court of Criminal Appeals ("CCA") dismissed three prior writ applications, in cause nos. 1675614-A, 1675614-B, and 1675614-C.

15. On March 21, 2024, the applicant filed a *pro se* application for writ of habeas corpus.

16. On March 22, 2024, Judge Warren referred the writ to an associate judge for resolution.

17. On April 29, 2024, and May 6, 2024, respectively, the State filed an Answer and Proposed Findings of Fact and Conclusions of Law recommending a denial.

18. On May 7, 2024, Judge Warren appointed Brittany Lacayo to represent the applicant in the instant writ.

19. The associate court designated issues and ordered Heller and Krugh to file affidavits (or unsworn declarations) responding to the applicant's claims.

20. On July 26, 2024, Heller filed an affidavit responding to the applicant's claims.

21. Heller's July 26, 2024 affidavit is credible.

22. On August 1, 2024, Krugh filed an affidavit responding to the applicant's claims.

23. Krugh's August 1, 2024 affidavit is credible.

24. On August 31, 2024, the State filed Supplemental Proposed Findings of Fact and Conclusions of Law recommending a denial.

25. On September 12, 2024, Lacayo filed an amended application for writ of habeas corpus alleging one ground for relief – that Krugh was ineffective at the motion to adjudicate hearing.

26. On October 9, 2024, Lacayo filed a second amended application for writ of habeas corpus alleging four grounds for relief: (1) ineffective assistance of counsel at trial; (2) absolute innocence; (3) actual innocence; and (4) ineffective assistance of counsel at the motion to adjudicate hearing.

Certified Document Number: 117313977 - Page 3 of 10

27. Lacayo attaches an Unsworn Declaration that Wayne Heller executed on October 7, 2024 in support of the second amended application. *Applicant's Writ Exhibit "4", Unsworn Declaration of Wayne Heller.*

28. Heller's October 7, 2024 Unsworn Declaration credible.

INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL

29. At the time Heller advised the applicant to plead guilty, Heller was not aware that the identification card the applicant used did not qualify as a governmental record as charged in the indictment. *Applicant's Writ Exhibit "4", Unsworn Declaration of Wayne Heller.*

30. At the time Heller advised the applicant to plead guilty, Heller was not aware of *Alfaro-Jiminez v. State*, 577 S.W.3d 240 (Tex. Crim. App. 2019). *Applicant's Writ Exhibit "4", Unsworn Declaration of Wayne Heller.*

31. Heller did not research the requirements for a conviction under Texas Penal Code § 37.10 (a)(5). *Applicant's Writ Exhibit "4", Unsworn Declaration of Wayne Heller.*

32. If Heller had known the State's evidence was legally insufficient to convict the applicant as charged in the indictment, Heller would not have advised the applicant to plead guilty. *Applicant's Writ Exhibit "4", Unsworn Declaration of Wayne Heller.*

33. The applicant claims he would not have pleaded guilty but would have proceeded to trial had Heller explained the law in relation to the facts. *Applicant's Exhibit "1", October 8, 2024 Unsworn Declaration of Donovan Farr.*

34. The court questions the credibility of the applicant's claim that he would not have pleaded guilty but would have proceeded to trial had Heller explained the law in relation to the facts considering that the State dismissed cause numbers 1675144 (theft) and 1688791 (felon in possession of a firearm) in exchange for the applicant's guilty plea.

35. Had the State proceeded in cause numbers 1675144 and 1688791, and subsequently obtained convictions in each cause, the trial court would have had the discretion to cumulate the sentences pursuant to Tex. Code Crim. Proc. Ann. art. 42.08.

Certified Document Number: 117313977 - Page 4 of 10

36. By pleading guilty, the applicant avoided two additional felony convictions and the possibility of additional prison time.

37. Heller's failure to research the applicable law and advise the applicant accordingly was deficient.

38. Heller's deficient conduct prejudiced the applicant as the applicant pled to, and was ultimately convicted of, an offense that the evidence did not support.

ABSOLUTE INNOCENCE

39. The State charged the applicant with tampering with a governmental record pursuant to § 37.10 (a)(5).

40. An offense under § 37.10 (a)(5) is a third degree felony unless the actor's intent is to defraud or harm another, in which event the offense is a second degree felony. § 37.10 (c)(2)(A).

41. The evidence was legally insufficient to support the applicant's conviction as indicted.

42. The applicant used/presented a fake Texas Driver's License[2] – a document created to look like an official Texas Driver's License – in order to purchase a vehicle.

43. The applicant's conduct constitutes tampering with a governmental record pursuant to § 37.10 (a)(2) which provides that a person commits tampering with a governmental record if they present, or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record.

44. Except as provided by Subdivisions (2), (3), (4), (5), and (6), and by Subsection (d), an offense under § 37.10 (a)(2) is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony. § 37.10 (c)(1).

45. Although the evidence is not sufficient to support the conviction as indicted, the evidence is sufficient to support a conviction pursuant to § 37.10 (a)(2).

[2] The State's Habeas Prosecutor spoke with the arresting officer and confirmed that the license the applicant used was not a governmental record.

Certified Document Number: 117313977 - Page 5 of 10

ACTUAL INNOCENCE

46. The applicant does not present any new evidence that establishes he is actually innocent.

INEFFECTIVE ASSISTANCE OF COUNSEL AT MOTION TO ADJUDICATE HEARING

47. The applicant claims Krugh failed to explain the State's evidence and failed to convey the State's 2-year plea offer prior to the motion to adjudicate hearing. *Applicant's Writ at 12-13.*

48. Krugh discussed the State's charges with the applicant. *Krugh's August 1, 2024 Affidavit.*

49. It was the applicant's decision to proceed with the motion to adjudicate hearing. *Krugh's August 1, 2024 Affidavit.*

50. On March 1, 2022, the State offered to resolve the Motion to Adjudicate for 2 years in the Texas Department of Corrections. *Krugh's August 1, 2024 Affidavit.*

51. The applicant rejected the State's 2-year offer. *Krugh's August 1, 2024 Affidavit.*

52. The applicant's claim that Krugh failed to convey the State's 2-year plea offer prior to the motion to adjudicate hearing is not persuasive.

53. Assuming, without finding that Krugh failed to convey the State's 2-year plea offer, the applicant fails to show the trial court would have accepted it.

54. Judge Warren presided over the applicant's guilty plea and was aware that the State dismissed cause numbers 1675144 (state jail felony theft) and 1688791 (third degree felon in possession of a firearm) in conjunction with the plea.

55. Judge Warren gave the applicant multiple chances while on deferred adjudication despite the applicant committing new law violations (Unauthorized Use of a Motor Vehicle and Assault on a Public Servant) on separate occasions while on community supervision.

56. After the motion to adjudicate hearing, Judge Warren assessed punishment at 10 years of confinement despite the State's suggestion that he assess punishment at 2 years of confinement.

Certified Document Number: 117313977 - Page 6 of 10

57. The applicant fails to show Judge Warren would have accepted a 2-year agreement had the applicant accepted the State's offer.

58. The applicant fails to show Krugh's conduct was deficient.

59. The applicant fails to show harm as a result of Krugh's performance.

CONCLUSIONS OF LAW

INEFFECTIVE ASSISTANCE OF COUNSEL

1. In order to prevail on a claim of ineffective assistance of trial counsel, the applicant must prove that trial counsel's representation was deficient, and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

2. Trial counsel's representation is deficient if it falls below an objective standard of reasonableness. *Id.* at 688.

3. In order to establish prejudice, the applicant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694.

4. The applicant was denied the effective assistance of counsel at the time of his guilty plea. *Id.*

5. In all things, the applicant fails to show he was denied the effective assistance of counsel at the motion to adjudicate hearing.

ABSOLUTE INNOCENCE

6. "[I]n an 'absolute innocence' scenario, the conduct the State charges the defendant with is not an offense." *Ex parte Reeder*, 691 S.W.3d 628, 639 (Tex. Crim. App. 2024) (Keller, P.J., concurring).

7. Because the applicant fails to show the conduct the State charged him with is not an offense, the applicant fails to show he is absolutely innocent.

Certified Document Number: 117313977 - Page 7 of 10

ACTUAL INNOCENCE

8. There are two types of actual innocence claims in Texas: *Herrera* claims and *Schlup* claims. *Herrera v. Collins, 506 U.S. 390 (1993); Schlup v. Delo*, 513 U.S. 298 (1995).

9. *Herrera* claims are bare innocence claims based on newly discovered evidence.

10. *Schlup* claims involve a procedural claim of innocence.

11. To prevail on a *Herrera* claim of actual innocence, an applicant must establish by clear and convincing evidence that no reasonable juror would have convicted him in light of new evidence. *Ex parte Elizondo*, 947 S.W.2d 202, 205 (Tex. Crim. App. 1996).

12. "Newly discovered evidence" refers to evidence that was not known to the applicant at the time of trial and could not be discovered by exercising due diligence. *Ex parte Brown*, 205 S.W.3d 538, 545 (Tex. Crim. App. 2006).

13. Because the applicant does not present any new evidence that establishes his innocence, he fails to show he is actually innocent.

14. Because the applicant was denied the effective assistance of counsel prior to his guilty plea, the applicant is entitled to habeas relief.

Accordingly, this court recommends that the Texas Court of Criminal Appeals grant relief.

Certified Document Number: 117313977 - Page 8 of 10

ORDER

THE CLERK IS **ORDERED** to prepare a transcript of all papers in cause number 16756140101D and transmit same to the Court of Criminal Appeals as provided by Tex. Code Crim. Proc. Ann. art. 11.07. The transcript shall include certified copies of the following documents:

1. The Application for Writ of Habeas Corpus and each Amended Application;
2. The State's Original Answer and any attached Exhibits;
3. The Court's Findings of Fact, Conclusions of Law, and Order;
4. The State's Amended Proposed Findings of Fact, Conclusions of Law and Order; and
5. The applicant's Proposed Findings of Fact and Conclusions of Law.

THE CLERK is **ORDERED** to send a copy of this order to the applicant's counsel, and to counsel for the State as follows:

Brittany Lacayo (Applicant's Counsel)
Brittany.Lacayo@pdo.hctx.net

Jill Burdette (State)
Burdette_Jill@dao.hctx.net

By the following signature, the Court adopts the State's Amended Proposed Findings of Fact, Conclusions of Law and Order in Cause Number 16756140101D.

Signed on the _____ day of _____, 2024.

Signed:
10/31/2024

JUDGE PRESIDING

Certified Document Number: 117313977 - Page 9 of 10

CERTIFICATE OF SERVICE

I, Jill Burdette, certify that on October 28, 2024, I directed the electronic filing service provider efile.tx.gov to electronically serve a copy of the State's Amended Proposed Findings of Fact, Conclusions of Law, and Order on the applicant's habeas attorney, Brittany Lacayo, Harris County Public Defender's Office, 1310 Prairie St., 13th Floor, Houston, TX 77002, at Brittany.Lacayo@pdo.hctx.net.

Signed October 28, 2024.

/s/ Jill Burdette

Jill Burdette
Assistant District Attorney
Harris County
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Houston, Texas 77002
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Texas Bar ID#24055492

Certified Document Number: 117313977 - Page 10 of 10

I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this April 23, 2025

Certified Document Number: 117313977 Total Pages: 10

Marilyn Burgess

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

Appendix C

Texas Court of Criminal Appeals' denial of Applicant's Suggestion to Reconsider on the Court's own Motion, Mar. 26, 2025, unreported.

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

3/26/2025

FARR, DONOVAN JACOB **Tr. Ct. No. 1675614-D** **WR-94,318-04**

This is to advise that the applicant's suggestion for reconsideration has been denied without written order.

Deana Williamson, Clerk

DONOVAN JACOB FARR
POLUNSKY UNIT - TDC # 2389193
3872 FM 350 S.
LIVINGSTON, TX 77351

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS FILE COPY
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

3/26/2025
FARR, DONOVAN JACOB Tr. Ct. No. 1675614-D WR-94,318-04
This is to advise that the applicant's suggestion for reconsideration has been denied without written order.

Deana Williamson, Clerk

BRITTANY LACAYO
ASSISTANT PUBLIC DEFENDER
1310 PRAIRIE 4TH FLOOR
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

Appendix D

Opinion from the Texas Court of Appeals affirming the trial court's judgment. *Farr v. State*, No. 01-22-00318-CR, 2023 WL 4937498 (Tex. App. – Houston [1st Dist.] Aug. 3, 2023, no pet.) (mem. op., not designed for publication).

2023 WL 4937498
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

Do not publish. TEX. R. APP. P. 47.2(b).
Court of Appeals of Texas, Houston (1st Dist.).

Donovan Jacob FARR, Appellant
v.
The STATE of Texas, Appellee

NO. 01-22-00318-CR
|
Opinion issued August 3, 2023

On Appeal from the 209th District Court, Harris County, Texas, Trial Court Case No. 1675614

Attorneys and Law Firms

Abbie Miles Russell, for Appellant.

Ryan C. Kent, Kim K. Ogg, for Appellee.

Panel consists of Justices Goodman, Landau, and Rivas-Molloy.

MEMORANDUM OPINION

Gordon Goodman, Justice

***1** Donovan Jacob Farr entered a plea of guilty to the offense of tampering with a government record. The trial court withheld a finding of guilt and placed Farr on deferred-adjudication community supervision for a period of four years. Later, finding that Farr had violated the terms of his community supervision, the trial court adjudged him guilty of the offense and assessed his punishment at ten years in prison. Farr appeals, arguing in a single issue that the trial court abused its discretion in finding that he had violated the terms of his community supervision. We affirm.

BACKGROUND

The State moved to revoke Farr's deferred-adjudication community supervision and adjudicate his guilt. It argued that he had violated the terms of his community supervision by violating Section 32.51 of the Texas Penal Code, which makes it an offense to fraudulently use or possess another's identifying information.

Farr pled not true to the State's allegations. And the trial court, sitting as factfinder, held an evidentiary hearing to decide whether the allegations were true.

The State called three witnesses, the first of which was Jackie Scurry, the court liaison officer for the 209th District Court. As part of her job, she is the custodian of records for probation-related documents. Scurry testified that Farr had been placed on deferred-adjudication community supervision for a period of four years in connection with a prior case alleging that he tampered with a government record. She further stated that Farr's period of deferred adjudication had not yet concluded.

Scurry explained that the 209th District Court imposed terms and conditions on Farr in connection with the deferred adjudication and that these terms and conditions had been explained to Farr. Farr indicated that he understood the terms and conditions by signature. One of these terms and conditions was that he not commit any criminal offenses. But Farr did not comply, specifically by committing the offense of fraudulently using or possessing another's identifying information.

A copy of the district court's order of deferred adjudication was admitted into evidence without objection. Accompanying the order was a document entitled Conditions of Community Supervision. Its first term provides that Farr "[c]ommit no offense against the laws of this or any other State or of the United States."

The State's second witness was D. Frederick, a peace officer with the Pasadena Police Department. He conducted a traffic stop when Farr made an unsafe lane change and ultimately arrested Farr due in part to an outstanding warrant.

During the traffic stop, Frederick searched Farr's vehicle. He found two checks in the center console that he "believed to be fraudulent at the time." Once at the jail for booking, Frederick searched Farr's wallet for contraband and found "several IDs and debit cards that did not belong to him." The names of the persons associated with these IDs and debit cards were Camron Finney, Ikoreous Youngblood, Daniel Reyes, Christian Saenz, Joshua Blackmon, and Danielle Lewis.

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*2 Farr told Frederick that he purposely obtained the card belonging to Christian Saenz under a false name. That is, Farr claimed that he was Saenz, explaining that he used a false name in this case because he was a convicted felon under his own name. Farr claimed Reyes was his cousin. He further claimed Finney was his nephew. Farr gave no explanation as to why he had the ones relating to Blackmon or Lewis, but he claimed that Youngblood "was possibly his sister's boyfriend."

On cross-examination, Frederick stated with respect to the two checks that he "passed the investigation off to our financial crimes detectives." Thus, Frederick himself did not know one way or the other whether the checks were fraudulent.

Frederick also agreed that he called a second officer, K. Adams, to the scene of the traffic stop. Frederick did not recall whether he or Adams first collected Farr's wallet during the traffic stop. But body-camera footage showed that Adams did so.

Adams conducted an inventory of the contents of Farr's vehicle. Frederick admitted he "wasn't aware exactly" what Adams did during this process. Defense counsel asked whether it was possible that Adams "may have found some more of those cards, like the ones you found, and then put them in" Farr's wallet "just to condense them." Frederick replied "anything is possible" but said he did not know.

Farr told Frederick the vehicle he was driving belonged to his brother. Frederick testified that he runs the vehicle registration during all traffic stops, but he could not recall the results here. So, he did not know to whom Farr's vehicle was registered. Nor was this detail memorialized in Frederick's report about the stop.

Finally, the State called Ikoreous Youngblood to the stand. Youngblood testified that he did not know Farr. He said he left his ID in his car, which was stolen. Youngblood said he never gave Farr or anyone else permission to have his ID.

Farr then testified in his own defense. The day he was stopped, he was out on bond and did not have his own vehicle, so he had borrowed his brother's vehicle.

Farr testified he did not know about the checks in the vehicle's console. He denied that Youngblood's ID had been in his wallet. He said he did not know how it got in there. Farr said that none of the other IDs or debit cards had been in his wallet either. But he conceded on cross-examination that his charge for tampering with a government record arose from an attempt to buy a vehicle with a fraudulent ID.

In his closing argument, defense counsel argued that the trial court should credit Farr's testimony that the various IDs and debit cards in others' names were not in his wallet. Defense counsel maintained that the IDs and cards may well have just been in the vehicle and then placed in Farr's wallet by Officer Adams when he inventoried the vehicle so as to collect them all in a single place. According to defense counsel, the IDs and debit cards may have belonged to Farr's brother instead.

The trial court found by a preponderance of the evidence that the State's allegation that Farr had committed the offense of fraudulently using or possessing identifying information was true. Thus, the court adjudged Farr guilty of the offense for which he had been on deferred-adjudication community supervision—tampering with a government record—and sentenced him to ten years of imprisonment.

DISCUSSION

Farr argues that the evidence is legally insufficient to show that he violated the terms of his community supervision by committing the offense of using or possessing another's identifying information. In particular, he argues that the State did not prove by a preponderance of the evidence that he possessed another's identifying information with the specific intent to defraud or harm another.

Standard of Review

*3 We review a trial court's decision to revoke deferred-adjudication community supervision for an abuse of discretion. *Leonard v. State*, 385 S.W.3d 570, 576 (Tex. Crim. App. 2012). In general, a trial court has the discretion to revoke community supervision when a preponderance of the evidence supports one of the State's allegations that the defendant violated a condition of his community supervision. *Id.*

Applicable Law

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A person commits the offense of fraudulently using or possessing identifying information if, among other things, he, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of identifying information of another person without the other person's consent or effective consent. TEX. PENAL CODE § 32.51(b)(1). The general purpose of criminalizing this conduct is to prevent identity theft. *Jones v. State*, 396 S.W.3d 558, 562 (Tex. Crim. App. 2013).

Identifying information is information that alone or in conjunction with other information identifies a person, including a person's name and date of birth or unique electronic identification number, address, routing code, and financial institution account number. PENAL § 32.51(a)(1)(A), (C). The unit of prosecution is "any piece of identifying information enumerated in the statute that alone or in conjunction with other information identifies a person, and does not mean each document containing a group of identifying information," such as each driver's license or check. *Cortez v. State*, 469 S.W.3d 593, 604 (Tex. Crim. App. 2015); *see also Grimm v. State*, 496 S.W.3d 817, 822 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (citing *Cortez* for proposition that " 'item of identifying information' does not refer to the individual record where the information appears" and observing that "an individual record may actually contain more than one item of identifying information").

One is presumed to have the intent to harm or defraud another if he possesses the identifying information of three or more other persons. PENAL § 32.51(b-1)(1). The other persons must be real ones, not fictional persons. *Jones*, 396 S.W.3d at 563. Otherwise, proof of intent to harm or defraud may be direct or circumstantial. *Sanchez v. State*, 536 S.W.3d 919, 920–21 (Tex. App.—Houston [1st Dist.] 2017, no pet.). To prove the element of intent, the State need not disprove exculpatory explanations offered by the defendant that turn on his credibility. *Id.* at 921–22.

Analysis

The sole element that Farr challenges on appeal is intent, arguing that the State did not prove he had the intent to harm or defraud another. However, Officer Frederick testified that Farr had in his wallet IDs or debit cards in six different names other than his own: Camron Finney, Ikoreous Youngblood, Daniel Reyes, Christian Saenz, Joshua Blackmon, and Danielle Lewis. Because Farr possessed the identifying information of three or more other persons, the trial court was entitled to presume that he did so with the intent to harm or defraud. PENAL § 32.51(b-1)(1).

Moreover, even without the aid of the presumption, the trial court could have reasonably inferred an intent to harm or defraud from the evidence. For example, Frederick testified that Farr had claimed that Youngblood might be his sister's boyfriend, as a way of providing an innocent explanation for the possession of his ID. But Youngblood's testimony, which the trial court sitting as factfinder was entitled to credit, refuted Farr's explanation and detracted from Farr's credibility. *See Bell v. State*, 649 S.W.3d 867, 898 (Tex. App.—Houston [1st Dist.] 2022, pet. ref'd) (trial court, as trier of fact in revocation proceeding, assesses credibility of witnesses and decides weight their testimony merits, and appellate court must examine evidence in light most favorable to trial court's revocation order on appeal).

***4** Similarly, if the trial court credited Frederick's testimony, Farr himself acknowledged that he possessed one of the IDs for the explicit purpose of fraud, stating that he obtained the Saenz ID under that name, rather than his own, to avoid the disclosure of his true identity on account of his status as a convicted felon. Based on this testimony, the trial court could have reasonably inferred that Farr also possessed other IDs in different names for the purpose of committing identity fraud. Though a factfinder is never bound to apply it, the adage "false in one, false in all" is often very persuasive, especially when an evaluation of the truth turns in significant part on credibility. *See Tucker v. State*, 150 S.W.2d 1025, 1029 (Tex. Crim. App. 1941) (jury was entitled to avail itself of adage "false in one, false in all" as to witness's testimony and apparently did so, crediting nothing she said on stand).

Finally, the trial court was not obliged to accept Farr's contrary testimony at the hearing, in which he denied having put the IDs and debit cards in his wallet. Nor was the trial court obliged to accept the defense positions that the IDs and debit cards may have belonged to Farr's brother or that Officer Adams must have put them in Farr's wallet, both propositions for which there is no direct evidence in the record. Nor was the State required to disprove exculpatory explanations of this kind to prove that Farr had the intent to harm or defraud. *See Sanchez*, 536 S.W.3d at 921–22.

We overrule Farr's sole issue on appeal.

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CONCLUSION

We affirm the trial court's judgment.

All Citations

Not Reported in S.W. Rptr., 2023 WL 4937498

End of Document

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Appendix E

209th Judicial District Court's Judgment, Apr. 1, 2022.

CAUSE NO. 167561401010
INCIDENT NO. /TRN: 9267958925A001

Pgs-4

THE STATE OF TEXAS	§	**IN THE 209TH DISTRICT**
	§	
V.	§	**COURT**
	§	
FARR, DONOVAN JACOB	§	**HARRIS COUNTY, TEXAS**
	§	
STATE ID NO.: TX08724333	§	

JUDGMENT ADJUDICATING GUILT

Judge Presiding: **BRIAN WARREN** Date Sentence Imposed: **04/01/2022**

Attorney for State: **CHANDLER RAINE** Attorney for Defendant: **KRUGH, NEIL ALEXANDER**

Date of Original Community Supervision Order: **1/5/2021** Statute for Offense:

Offense for which Defendant Convicted: **TAMPER GOVERNMENT RECORD**

Date of Offense: **05/16/2020** Degree of Offense: **2ND DEGREE FELONY**

Plea to Motion to Adjudicate: **NOT TRUE** Findings on Deadly Weapon: **N/A**

Terms of Plea Bargain (if any): or ☐ Terms of Plea Bargain are attached and incorporated herein by this reference.
WITHOUT AGREED RECOMMENDATION - MAJ H
Reduced from: N/A

Punishment and Place of Confinement: **10 YEARS , INSTITUTIONAL DIVISION, TDCJ**

Date Sentence Commences: (Date does not apply to confinement served as a condition of community supervision.)
04/01/2022

THIS SENTENCE SHALL RUN: CONCURRENTLY.

☐ **SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .**
(The document setting forth the conditions of community supervision is incorporated herein by this reference.)

Fines:	Restitution:	Restitution Payable to: N/A
$ **N/A**	$ **N/A**	(See special finding or order of restitution which is incorporated herein by this reference.)

Court Costs:	Reimbursement Fees:
$ **290.00**	$ **665.00**

☐ **Defendant is required to register as sex offender** in accordance with Chapter 62, Tex. Code Crim. Proc.

(For sex offender registration purposes only) The age of the victim at the time of the offense was **N/A** .

Total Jail Time Credit: **389 DAYS**

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: **TOWARD INCARCERATION, FINE, AND COSTS**

Was the victim impact statement returned to the attorney representing the State? **N/A**

(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 42A.559, Tex. Code Crim. Proc.? **N/A**

The Court previously deferred adjudication of guilt in this case. Subsequently, the State filed a motion to adjudicate guilt.

The case was called for hearing. The State appeared by her District Attorney as named above.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared with Counsel.

☐ Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

After hearing and considering the evidence presented by both sides, the Court **FINDS THE FOLLOWING:** (1) The Court previously found Defendant qualified for deferred adjudication community supervision; (2) The Court deferred further proceedings, made no finding of guilt, and rendered no judgment; (3) The Court issued an order placing Defendant on deferred adjudication community supervision for a period of **4 YEARS** ; (4) The Court assessed a fine of

Certified Document Number: 110880109 - Page 1 of 4

$ N/A; (5) While on deferred adjudication community supervision, Defendant violated the conditions of community supervision, as set out in the State's **AMENDED** Motion to Adjudicate Guilt, as follows:
COMMITTING AN OFFENSE AGAINST THE STATE OF TEXAS.

Accordingly, the Court **GRANTS** the State's Motion to Adjudicate. **FINDING** that the Defendant committed the offense indicated above, the Court **ADJUDGES** Defendant **GUILTY** of the offense. The Court **FINDS** that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court **ORDERS** Defendant punished as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court **ORDERS** Defendant to pay the fines, court costs, reimbursement fees, 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 County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court **ORDERS** Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions in this paragraph. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **County Jail—State Jail Felony Conviction.** Pursuant to §12.44(a), Tex. Penal Code, the Court **FINDS** that the ends of justice are best served by imposing confinement permissible as punishment for a Class A misdemeanor instead of a state jail felony. Accordingly, Defendant will serve punishment in the county jail as indicated above. The Court **ORDERS** Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fines, court costs, reimbursement fees, and restitution due.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY.** The Court **ORDERS** Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, reimbursement fees, and restitution ordered by the Court in this cause.

☐ **Confinement as a Condition of Community Supervision.** The Court **ORDERS** Defendant confined days in as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines Imposed Include (check each fine and enter each amount as pronounced by the court):

☐ General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) $ (not to exceed $10,000)
☐ Add'l Monthly Fine for Sex Offenders (Art. 42A.653, Code Crim. Proc.) **$ 5.00** ($5.00/per month of community supervision)Total $ **Asssessed as Cond of CS**
☐ Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) **$ 100.00** ($100)
☐ EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) **$100.00** ($100)
☐ Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) **$ 100.00** ($100)
☐ Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) **$ 50.00** ($50)
☐ State Traffic Fine (§ 542.4031, Transp. Code) **$ 50.00** ($50)
☐ Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) **$ Assessed as Cond of CS** (not to exceed $50)
☐ Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) $ (To Be Determined by the Court)
☐ Repayment of Reward Fine - as Cond of CS (Art. 42A.301 (b) (20), Code Crim. Proc.) **$ Assessed as Cond of CS** (not to exceed $50)

Execution of Sentence

The Court **ORDERS** Defendant's sentence **EXECUTED.** The Court **FINDS** that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

Furthermore, the following special findings or orders apply:

SEE THE ATTACHED FIREARM ADMONISHMENT

Certified Document Number: 110880109 - Page 2 of 4

Date Judgment Entered: 4/1/2022

X _____

BRIAN WARREN
JUDGE PRESIDING

Clerk: S CHARLESTON

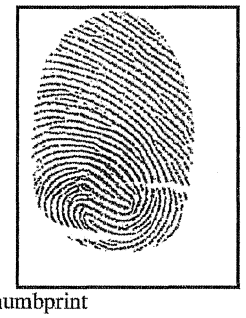
Notice of Appeal Filed: **04/26/2022**

Mandate Received: **10/19/2023** Type of Mandate: **AFFIRMANCE**

After Mandate Received, Sentence to Begin Date is: **04/1/2022**

TO REMAIN THE SAME

Jail Credit: _____DAYS



Thumbprint

Case Number: 167561401010 Court: 209TH Defendant: **FARR, DONOVAN JACOB**

Certified Document Number: 110880109 - Page 3 of 4

WRITTEN ADMONITION ON INELIGIBILITY TO POSSESS FIREARM OR AMMUNITION

In accordance with Texas Administrative Code §176.1, the Court hereby admonishes you of the following:

1. You are, by entry of order or judgment, ineligible under Texas law to possess a firearm or ammunition.
2. Beginning now, if you possess a firearm or ammunition it could lead to charges against you. If you have questions about how long you will be ineligible to possess a firearm or ammunition, you should consult an attorney.
3. Under Texas Penal Code §46.01(3):

a. "**Firearm**" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use

b. "**Firearm**" does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by Penal Code Chapter 46 and that is (1) an antique or curio firearm manufactured before 1899 or (2) a replica of an antique or curio firearm manufactured before 1899 but only if the replica does not use rim fire or center fire ammunition.

The statutes listed below are a starting point for ineligibility to possess a firearm or ammunition. For more information about the laws that make you ineligible to possess a firearm or ammunition, or for more information on how long your ineligibility to possess a firearm or ammunition lasts, the Court recommends you contact an attorney.

- Code of Criminal Procedure Article 17.292 – Magistrate's Order for Emergency Protection
- Code of Criminal Procedure Article 42.0131 – Notice for Persons Convicted of Misdemeanors Involving Family Violence
- Penal Code §46.02 – Unlawful Carrying Weapons
- Penal Code §46.04 – Unlawful Possession of Firearm
- Penal Code §25.07 – Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case
- Family Code §85.026 – Warning on Protective Order

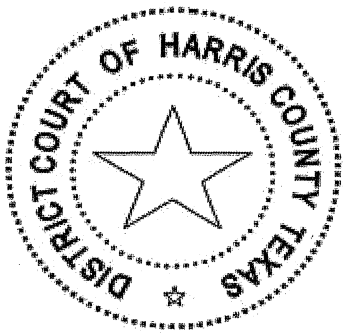
DATE: 04/01/2022

DEFENDANT: 

CASE NUMBER: 167561401010

DEFENDANT NAME: FARR, DONOVAN JACOB

Certified Document Number: 110880109 - Page 4 of 4



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this April 23, 2025

Certified Document Number: 110880109 Total Pages: 4

Marilyn Burgess

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONOVAN JACOB FARR
Petitioner

v.

THE STATE OF TEXAS
Respondent

PROOF OF SERVICE

I, BRITTANY CARROLL LACAYO, on April 29, 2025, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and the PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid.

The name and addresses of those served are as follows:

MR. SEAN TEARE
Harris County District Attorney
1201 Franklin St., 6th Floor
Houston, Texas 77002
Tel No. (713) 274-5800

MR. KEN PAXTON
Texas State Attorney General,
P.O. Box 12548
Austin, TX 78711-2548
Texas 78711-2548.
Tel. No. (512) 463-2100

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

Executed on April 29, 2025.

Respectfully submitted,

BRITTANY CARROLL LACAYO
Assistant Chief, Wrongful Convictions Division
Harris County Public Defender's Office
TBN: 24067105
1310 Prairie St., 4th Floor, Suite 400
Houston, Texas 77002
Phone: (713) 274-6700
Fax: (713) 368-9278
Brittany.Lacayo@pdo.hctx.net