APPENDIX A

1. Enlarged File Copy of Texas Court of Criminal Appeals 7/30/2025 DENIAL of Tr. Ct. No. C-372-W012470-0849816-D WR-69,159-07. one page

2. The Court of Criminal Appeals of Texas - ORDER TO REMAND No. WR-69,159-07 for RECORD HEARING. 2 Of 2 pages

3. 20 page Memorandum of Law In Support of Application for writ habeas corpus Cause No.W012470-D. filed by Counsel Matthew Smid on Oct. 25,2024. With Exhibits.

4. 10 page PROPOSED FINDINGS AND ORDER by the 372nd Judicial District Court of Tarrant County,Texas. filed 3/12/2025.

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

FILE COPY

7/30/2025

FLORES, JERRY LEE Tr. Ct. No. C-372-W012470-0849816-D WR-69,159-07

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

Deana Williamson, Clerk

MATTHEW SMID
ATTORNEY AT LAW
301 COMMERCE STREET, STE. 2001
FORT WORTH, TX 76102-4129
* DELIVERED VIA E-MAIL *

Appendix A

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-69,159-07

EX PARTE JERRY LEE FLORES, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. C-372-W012470-0849816-D IN THE 372ND DISTRICT COURT
FROM TARRANT COUNTY**

***Per curiam*. YEARY, J., filed a dissenting opinion. KEEL, J., dissented.**

ORDER

Applicant was convicted of driving while intoxicated and sentenced to life imprisonment. The Second Court of Appeals affirmed his conviction. *Flores v. State*, No. 2-02-340-CR (Tex. App.—Fort Worth Nov. 6, 2003) (not designated for publication). 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.

Applicant contends, among other things, that his sentence is illegal because non-final felony convictions out of Oklahoma were used to enhance the punishment range. Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte McMillan*, 688 S.W.3d 336 (Tex. Crim. App. 2024); *Ex parte Pue*, 552 S.W.3d 226 (Tex. Crim. App. 2018). Accordingly, the record should be

developed. The trial court is the appropriate forum for findings of fact. TEX. CODE CRIM. PROC. art. 11.07, § 3(d). In developing the record, the trial court may use any means set out in Article 11.07, § 3(d). If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wants to be represented by counsel, the trial court shall appoint counsel to represent him at the hearing. *See* TEX. CODE CRIM. PROC. art. 26.04. If counsel is appointed or retained, the trial court shall immediately notify this Court of counsel's name.

The trial court shall make findings of fact and conclusions of law as to whether Applicant's sentence was enhanced with non-final felony convictions. The trial court shall also determine whether Applicant has different final felony convictions which could have been used to enhance the punishment range. *See Ex parte Parrott*, 396 S.W.3d 531 (Tex. Crim. App. 2013). The trial court may make any other findings and conclusions that it deems appropriate in response to Applicant's claim.

The trial court shall make findings of fact and conclusions of law within ninety days from the date of this order. The district clerk shall then immediately forward to this Court the trial court's findings and conclusions and the record developed on remand, including, among other things, affidavits, motions, objections, proposed findings and conclusions, orders, and transcripts from hearings and depositions. *See* TEX. R. APP. P. 73.4(b)(4). Any extensions of time must be requested by the trial court and obtained from this Court.

Filed: September 25, 2024
Do not publish

CASE No. W012470-D
(Trial No. 0849816)

	§	**IN THE 372nd DISTRICT**
EX PARTE		
	§	**COURT OF**
JERRY LEE FLORES	§	**TARRANT COUNTY, TEXAS**

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT

Applicant Jerry Lee Flores, by and through his undersigned counsel, hereby submits this memorandum of law in support of his application for writ of habeas corpus.

Introduction

Applicant seeks to vacate his sentence for the Driving While Intoxicated (DWI)—Third Offense or More. He alleges that one of the prior convictions listed in the habitual offender notice of the indictment was not "final" at the time the subsequent alleged prior conviction was committed. Therefore, the offense was unlawfully enhanced and he received an illegal sentence. Applicant will address these facts in detail along with arguments and authority to support his position.

APPENDIX A

Cognizability

The Court of Criminal Appeals has held that a defendant "can always" raise an illegal sentence claim, including for the first time in an application for writ of habeas corpus. *Mizell v. State*, 119 S.W. 3d 804, 806 (Tex. Crim. App. 1996); *Ex parte Beck*, 922 S.W.2d 181, 182 (Tex. Crim. App. 1996). A sentence that is outside the maximum or minimum range of punishment is unauthorized by law and therefore illegal. *Mizell*, 119 S.W. 3d at 806. The Court of Criminal Appeals has specifically recognized that a claim of an illegal sentence based upon an invalid enhancement is cognizable in post-conviction habeas corpus proceedings, but the claim is subject to a harm analysis. *Ex parte Parrott*, 396 S.W.3d 531, 538 (Tex. Crim. App. 2013). Here, the Applicant alleges there was an invalid or defective enhancement prior conviction applied to him in the habitual offender notice and therefore his claim is cognizable.

Factual and Procedural Background

On June 26, 2002, Applicant was indicted for the offense of DWI Third Offense or More. To obtain jurisdiction in felony court, the State alleged that the Applicant had been convicted of two prior DWI

offenses, specifically, 1) on February 23, 1993, in the Cherokee County, Oklahoma District Court, he was convicted of the offense of Operating a Motor Vehicle, While Under the Influence of Intoxicating Liquor, Second Offense, in cause number *CRF-93-13* and 2) on April 6, 1988, in the Cherokee County, Oklahoma District Court, he was convicted of the offense of Operating a Motor Vehicle, While Under the Influence of Intoxicating Liquor, Second Offense, in cause number *CRF-88-46.*

The Indictment also contained a "Habitual Offender Notice." That notice alleged 1) that prior to the commission of the offense set out in the indictment, the Applicant was finally convicted of the offense of Driving a Motor Vehicle, While Under the Influence of Intoxicating Liquor, Second Offense, in cause number *CRF-90-65* on February 23, 1993, and 2) *prior to the commission of the offense alleged in CRF-90-65*, the Applicant was finally convicted of the offense of Unlawful Possession of Marijuana with the Intent to Distribute in cause number *CRF-89-187* on February 15, 1990.

A closer review of the trial exhibits used to support the "Habitual Offender Notice" shows that this allegation was not accurate. The offense date for the felony DWI alleged in *CRF-90-65* is May 12, 1990.

The conviction in *CRF-89-187* did not become "final" until July 25, 1991. Therefore, it's clear that Applicant was not finally convicted of *CRF-89-187* before the commission of the offense alleged in *CRF-90-65*.

At the time of the indictment and punishment hearing to the jury, the State wrongfully believed that CRF-89-187 became a "final" conviction before the commission of CRF-90-65 and therefore selected those prior convictions to satisfy the "Habitual Offender Notice." This was not by accident, but a conscious decision made by the State, in that a conviction under Oklahoma law supposedly became "final" at the time of the guilty plea/sentencing, regardless of whether the offense was probated. Therefore, the State chose CRF-89-187 as an enhancement prior because they thought it became final on February 15, 1990, the day Applicant pled guilty and was placed on probation. Unfortunately for the State, *CRF-89-187* did not become "final" until July 25, 1991, the date his probation was revoked.

The State proceeded to jury trial on this flawed indictment. Applicant pled not guilty to the offense charged. The jury convicted Applicant of the charged offense. The same jury assessed punishment. At the start of the punishment hearing, Applicant pled "true" to the

"Habitual Offender Notice." At the conclusion of the punishment hearing, the jury assessed a life sentence. The trial court accepted that verdict and sentenced Applicant to life in prison.

Argument

I. Applicant's Sentence is Illegal.

The prior convictions alleged in the "Habitual Offender Notice" are not sequential and therefore Applicant was illegally sentenced. To enhance a defendant's punishment range and make him a habitual offender (25-life), it must be proven that 1) the first conviction became final, 2) the offense leading to a later conviction was committed, 3) the later conviction became final, and 4) the defendant subsequently committed the offense for which he presently stands accused. *Hopkins v. State*, 487 S.W.3d 583, 586 (Tex. Crim. App. 2016).

It's abundantly clear that first conviction alleged in the "Habitual Offender Notice" had not become final before the offense leading to the later conviction was committed. The offense date for the felony DWI alleged in CRF-90-65 had an offense date of May 12, 1990. The conviction in CRF-89-187 did not become final until July 25, 1991, the day Applicant's probation was revoked.

The State wrongfully relied on Oklahoma law in 2002 when it decided which priors to use in its "Habitual Offender Notice." Specifically, that CRF-89-187 became final on February 15, 1990, the day Applicant's sentence was suspended. Under Texas law, only convictions that are "final" can be used for enhancement purposes. *Ex parte Murchison*, 560 S.W.2d 654, 656 (Tex. Crim. App. 1978). A conviction is not "final" for enhancement purposes where the imposition of sentence has been suspended and probation granted. *Ex parte Langley*, 833 S.W.2d 141, 143 (Tex. Crim. App. 1992). Although out of state prior felony convictions can be used to enhance a sentence imposed in Texas, the determination of whether a defendant has been "finally" convicted for enhancement purposes is to be made in accordance with Texas law. *Ex parte Pue*, 552 S.W.3d 226, 235 (Tex. Crim. App. 2018). The State wrongfully believed CRF-89-187 became "final" on February 15, 1990. The Sentence was suspended that day and did not become final until July 25, 1991—the day Applicant's probation was revoked, meaning CRF-89-187 was not final before May 12, 1990, the date the offense alleged in CRF-90-65 was committed. Therefore, Applicant's punishment range should have been 2-20. The

life sentence assessed to Applicant is far outside that range and thus his sentence is illegal.

II. The Applicant was harmed due to the illegal sentence

In light of this illegal sentence, a harm analysis must be conducted. The Applicant has been harmed in that no other *viable* prior conviction exists to take the place of the defective habitual enhancement prior. The State has an unprecedented argument for harmlessness in this case. The State will argue that it can substitute one if its DWI jurisdictional enhancement priors for one of its defective "Habitual Offender Notice" priors. This is the equivalent of switching players positions in a game, after the game has already been played and decided. This plan, although creative, makes more problems than solutions and goes far beyond what the Court of Criminal Appeals has authorized.

The State will rely heavily on *Ex parte Parrott.* In *Parrott*, the Court of Criminal Appeals held that for an applicant to gain relief on an 11.07 writ alleging an illegal sentence, he must be harmed by the illegal sentence. *Ex parte Parrott*, 306 S.W.3d at 536-37. Specifically, when the record shows that he or she does not have another conviction that

can support a punishment range within which he or she is sentenced. *Id.* The applicant is not harmed by the illegal sentence when the record shows that there is another conviction that can *properly* support the punishment range within which he or she is sentenced. *Id.*

Here, the State will argue that Applicant has not been harmed because it can simply remove CRF-93-13 as a DWI jurisdictional enhancement prior and make it a prior for purposes of the "Habitual Offender Notice." The State is keenly aware that in cannot use the same DWI prior as a jurisdictional enhancement and punishment enhancement. Tex. Penal. Code 49.09(g). This unprecedented proposition will then create a hole in the indictment, specifically the jurisdictional enhancement allegation that has already been decided by a jury. Therefore, the State proposes to take apart the adjudicated indictment, by removing the defective habitual prior of CRF 90-65 from the "Habitual Offender Notice" and have it the take the place of CRF-93-13 as the newly created DWI jurisdictional enhancement. This action far exceeds what the Court authorized in *Parrott* and creates a multitude of problems.

In *Parrott*, the Defendant *pled guilty to an agreed sentence* of 15 years. *Ex parte Parrott*, 396 S.W.3d at 533. At the plea hearing, the Court and all parties agreed the Defendant's punishment range was 2-20. *Id.* It was later determined that one of the prior convictions relied upon to enhance the Defendant's range to 2-20 was a State Jail offense, and therefore his punishment range should have been 2-10. *Id.* To show harmlessness, the State was able to show another *unused* prior existed. *Id.* at 536-37. Critically, this prior was *not already utilized as a jurisdictional prior or punishment enhancement prior* in the indictment. *Id.* at 536-37. This substitute prior had not been utilized by the State whatsoever until it responded to the 11.07 writ application.

Applicant's case here was a contested jury trial which resulted in a maximum sentence of life in prison, not an *agreed sentence.* Further, the State does not have another prior, outside of CRF-93-13, that it can use to "substitute" for the defective habitual prior. Relying solely on CRF-93-13 to show harmless under *Parrott* is extremely problematic. The State chose CRF-93-13 as a jurisdictional prior in the indictment, meaning, the State had to prove beyond a reasonable doubt that the Applicant was finally convicted of this offense. The jury was instructed

by the Court that it must find that the Applicant was finally convicted in CRF-93-13 beyond a reasonable doubt in order to find Applicant guilty of the charged offense. (*See* Applicant's Exhibit 1). Removing CRF-93-13, is removing an element of proof in this case. Further, substituting it in as a habitual enhancement prior essentially erases the jury's verdict. Once a jury verdict of guilty has been returned, the only way in which a trial court may undo that verdict is by way of an order granting a motion for new trial. Tex. R. App. P. 21.1(a); *State v. Savage*, 933 S.W.2d 497, 499 (Tex. Crim. App. 1996). The State proposes fixing one problem—remedying its faulty punishment enhancement prior—by undoing the jury's verdict, effectively creating an even larger problem. The jury's verdict cannot be disturbed as jeopardy attached when the jury was sworn. *Crist v. Bretz*, 437 U.S. 28 (1978). The State chose CRF-93-13 as one of its jurisdictional priors and when the jury was sworn in, that decision was set in stone, as double jeopardy attached. *Id.* CRF-93-13 cannot now be considered as a punishment enhancement prior. Doing so would disturb the jury's verdict.

The State will likely argue that Applicant signed a stipulation drafted by the State, agreeing that he was finally convicted in CRF-93-13, therefore there is no harm here in substituting CRF-93-13 for CRF 90-65. This stipulation was offered during the guilt/innocence phase without objection. However, that stipulation does not change the fact that CRF-93-13 was still an element of proof that had to be proven beyond a reasonable doubt. Further, a close review of the jury charge shows that this stipulation was not mentioned. (*See* Applicant's Exhibit 1). The jury was not instructed to automatically find that this element was proven beyond a reasonable doubt. *Id.* The jury was not bound by the stipulation, and had every right to find that this element was not proven beyond a reasonable doubt. The State's proposed remedy to the problem it created attempts to extend this Court's ruling in *Ex parte Parrott* into unchartered and dangerous territory. No *viable* prior exists to cure the harm inflicted by the defective habitual offender notice.

III. Applicant was not provided with notice that the prior convictions at issue would be used interchangeably.

Prior to the trial, Applicant was put on notice by the indictment that CRF-93-13 was to be used as a DWI jurisdictional enhancement

prior and CRF-90-65 was to be used as a punishment enhancement prior. He was not put on notice that these priors would be used interchangeably. Allowing those felony convictions to be interchangeable would be contrary to notions of due process, as a defendant must receive reasonable notice and an opportunity to be heard when it comes to a punishment enhancement paragraph. *Oliver v. Boles*, 368 U.S. 448, 452 (1962). Had Applicant known that these would one day be interchangeable, he could have potentially challenged whether the State can prove that CRF-93-13 and CRF-89-187 are in sequence. Specifically, whether CRF-89-187 became final before the commission of CRF-93-13. If the Court finds that CRF-93-13 can be used as a punishment enhancement prior, the State will be relieved of its duty to prove to *the jury* that these two priors are in sequence. At a minimum, Applicant requests an evidentiary hearing at the trial court level to hold the State to its burden of proof. Such a hearing will not cure the problem of taking such a finding away from the jury. However, the Court in *Parrott*, held that the Applicant waived any argument of insufficient notice by not requesting an evidentiary hearing. *Ex parte Parrott*, 396 S.W.3d at 538.

The State will likely argue that a hearing is not necessary because the Applicant stipulated to CRF-93-13 at trial and pled true to CRF-90-65 at trial. However, as discussed above, the stipulation did not relieve the State of its burden to prove that CRF-93-13 was in sequence to CRF-89-187. This new substitution and placement of priors is a position the State now wishes to pivot to twenty-two years after the case was decided. Further, while s defendant pleading true to an enhancement paragraph usually relieves the State of its evidentiary burden to prove the enhancement allegation, if the record "affirmatively reflects" that the enhancements were improper that burden is *not relieved*. *Roberson v. State*, 420 S.W.3d 832, 838 (Tex. Crim. App. 2013). The record does affirmatively show that the habitual offender enhancement was improper and therefore that burden of proof has not been relieved. At minimum, an evidentiary hearing is warranted.

IV. The issue of whether *Ex parte Parrott* applies to jurisdictional priors is not foreclosed and still a serious question.

Ex parte Parrott dealt with a punishment enhancement prior on an *agreed plea*. A serious question remains as to whether the Court of Criminal Appeals would extend the harm analysis of *Parrott* to a case

with a defective jurisdictional prior. That issue is pertinent to this case, as the State moves to not only replace a defective punishment enhancement prior, but also a jurisdictional prior. The State will likely argue that the Court of Criminal Appeals has already decided this issue in *Ex parte Rodgers*, 508 S.W.3d 262 (Tex. Crim. App. 2020). A closer look at the Court's decision in *Rodgers*, and specially the facts leading to the decision, tells us otherwise. For starters, the Applicant in *Rodgers* never questioned whether the *Parrott* harm analysis applies to cases that have bad jurisdictional priors. *Id.* at 269-270. Applicant raises that issue now. This issue has never truly been in decided or even discussed by the Court.

Next, the Applicant in *Rodgers* admitted that he and his trial counsel knew about the defective prior *before the plea hearing* and decided to proceed anyway with an *agreed plea*. *Id.* at 265-66. Applicant's trial counsel submitted an affidavit stating that he and the Applicant were well aware of the bad jurisdictional prior. *Id.* They made the strategical decision to proceed with the *agreed plea* with the bad prior because the State had other priors that could have taken its place. *Id.* There is no evidence that such a discussion happened here

with Applicant and his trial counsel. That is because such a conversation never happened. Moreover, the Defendant in *Rodgers* entered into an *agreed plea*—pleading to a second-degree felony when the evidence suggested he was a habitual offender. *Id.* at 265. The Applicant in this case had a contested jury trial with a defective punishment enhancement allegation, that resulted in a maximum sentence, which further demonstrates the harm inflicted.

Serious questions and concerns remain as to whether the *Parrott* harm analysis should even extend to a matter where jurisdictional priors are substituted in and out of the defective indictment. As discussed above, substituting an element of proof out of an indictment, after the verdict has been rendered, raises serious due process and double jeopardy concerns. Removing one element of proof for another essentially undermines a jury's verdict. Such a harm inflicted creates serious cause for concern for criminal practitioners in this State.

V. The State made its decision to proceed with a defective indictment in 2002, now it must live with that decision.

The State will likely argue that it proceeded in good faith in 2002 with this defective inducement because they felt the State of the law

allowed them to proceed with an out of State prior that would be deemed "final" in Oklahoma, but not "final" in Texas. However, the Court of Criminal Appeals has recently ruled that the Court's ruling in *Ex parte Pue* was not a "new rule", and therefore the Court's ruling was foreseeable and automatically applied retroactively. *Ex parte McMillan*, 688 S.W.3d 336, 340 (Tex. Crim. App. 2024). The law was just a clear in 2002 as it is today regarding the requirements for a habitual offender enhancement, specifically, that those convictions must be sequential. *Tomlin v. State*, 722 S.W.2d 702, 705 (Tex. Crim. App. 1987). The State made the conscious and deliberate decision to proceed with a defective indictment, and now they must live with the consequences. Substituting a jurisdictional prior in for the defective punishment enhancement prior and then substituting that same defective prior in for the jurisdictional prior inflicts serious harm to the Applicant in that it undoes the jury's verdict and relieves the State with its burden of proof. The Applicant respectfully requests relief.

WHEREFORE, PREMISES CONSIDERED, Applicant Jerry Lee Flores respectfully prays that this Court grant relief requested in this Application, and vacate Applicant's judgment and sentence.

Respectfully submitted,

Matthew Smid
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Fort Worth, TX 76102
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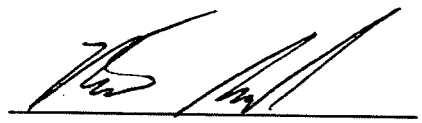
817.332.2763 (f)
Matt@mattmsmidlaw.com
TX Bar No. 24063541

CERTIFICATE OF COMPLIANCE

I, MATTHEW SMID, hereby certify that this memorandum of law was prepared with Microsoft Office Word 2017 using 14-point font, and that according to that program's word-count function, the entire document contains 3,369 words. Thus, the memorandum complies with word limitations in Rule 73 of the Texas Rules of Appellate Procedure, as required on the 11.07 Application.



MATTHEW SMID

CASE No. W012470
(Trial No. 0849816)

	§	**IN THE 372nd DISTRICT**
EX PARTE		
	§	**COURT OF**
JERRY LEE FLORES	§	**TARRANT COUNTY, TEXAS**

BEFORE ME, the undersigned authority, personally appeared MATTHEW SMID, Petitioner herein, after being duly sworn, stated upon oath that he has read the foregoing Memorandum of Law in Support of Application of Writ of Habeas Corpus, and it is true and correct to the best of his knowledge and belief.

MATTHEW SMID

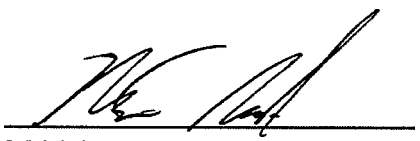
SWORN TO and subscribed before me on this 25th day of October, 2024.

TERESA M. PEETS
My Notary ID # 2626411
Expires November 7, 2025

Notary Public, State of Texas
My Commission Expires: 11/07/2025

CERTIFICATE OF SERVICE

I, MATTHEW SMID, hereby certify that on October 28, 2024, a true and correct copy of this document was hand-delivered to the Tarrant County Criminal District Attorney's office.



MATTHEW J. SMID

APPLICANT'S EXHIBIT 1

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS
Aug 21 2002
AUG 20 2002
correcting clerical error
Time 11:36
By SR Deputy

NO. 0849816D

THE STATE OF TEXAS	()	IN THE 372ND DISTRICT
VS.	()	COURT OF
JERRY LEE FLORES	()	TARRANT COUNTY, TEXAS

COURT'S CHARGE

MEMBERS OF THE JURY:

The Defendant, Jerry Lee Flores, stands charged by indictment with the offense of being intoxicated while operating a motor vehicle in a public place in Tarrant County, Texas, on or about the 24th day of October, 2001, after having previously been convicted two times of being intoxicated while operating a motor vehicle in a public place. To this charge the Defendant has pleaded not guilty.

Our law provides that any person who is intoxicated while operating a motor vehicle in a public place and who has previously been convicted two times or more of being intoxicated while operating a motor vehicle in a public place shall be guilty of a felony.

"Intoxicated" means:

(A) not having the normal use of one's mental or physical faculties by reason of the introduction of alcohol into the body; OR

(B) having an alcohol concentration of 0.08 or more.

"Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood.

"Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

You are instructed that any evidence before you concerning the Defendant having been previously convicted of any other driving while intoxicated offense may not be considered by you in determining whether or not the Defendant was intoxicated on or about October 24, 2001.

Our law provides a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded to the defendant, and in the event he does not testify, that fact cannot be taken as a circumstance against him. The Defendant has not testified, and you are instructed that you cannot and must not refer or allude to the fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against the Defendant.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial. The law does not require a Defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the Defendant, unless the jurors are satisfied beyond a reasonable doubt of the Defendant's guilt after careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the Defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the Defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the Defendant's guilt.

In the event you have a reasonable doubt as to the Defendant's guilt after considering all the evidence before you, and these instructions, you will acquit him and say by your verdict "Not Guilty".

Now, if you find from the evidence beyond a reasonable doubt that in Tarrant County, Texas, on or about the 24th day of October, 2001, the Defendant, Jerry Lee Flores, did heretofore then and there operate a motor vehicle in a public place while the said Defendant was intoxicated by not having the normal use of his mental or physical faculties by reason of the introduction of alcohol into his body or by having an alcohol concentration of at least 0.08, and if you further find from the evidence beyond a reasonable doubt that prior to the commission of the aforesaid offense by the said Defendant, on the 23rd day of February, 1993, in the District Court of Cherokee County, Oklahoma, in Cause Number CRF-93-13, the said Defendant was convicted of the offense of operating a motor vehicle while under the influence of intoxicating liquor, and on the 6th day of April, 1988, in the District Court of Cherokee County, Oklahoma, in Cause Number CRF-88-46, the said Defendant was convicted of the offense of operating a motor vehicle while under the influence of intoxicating liquor, and said convictions became final prior to the commission of the aforesaid offense, then you will convict the Defendant and say by your verdict "Guilty" of the felony offense as alleged in the indictment.

Unless you so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the Defendant and say by your verdict "Not Guilty".

The indictment in this case is no evidence whatsoever of the guilt of the Defendant. It is a written instrument necessary in order to bring this case into court for trial, and you will not consider the indictment as any evidence in this case or as any circumstance whatsoever against the Defendant.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to their testimony, but you are bound to receive the law from the Court, which is herein given, and be governed thereby.

You are charged that it is only in open court that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted to communicate to any other juror anything he or she may have seen or heard regarding the case or any witness therein, from any source other than in open court.

Your verdict must be by a unanimous vote of all members of the jury. In your deliberations you shall consider the charge as a whole and you must not refer to or discuss any matters not in evidence.

At times throughout the trial the Court may have been called upon to rule on the question of whether or not certain offered evidence might properly be admitted. You are not to concern yourselves with the reasons for the Court's ruling nor draw any inferences therefrom. Whether offered evidence is admissible is a question of law and in admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does the Court pass on the credibility of the witness. You must not consider any evidence offered that has been rejected by the Court. As to any questions to which objections were sustained, you must not engage in conjecture as to what the answers might have been or as to the reasons for the objections.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting the outcome of the case. The Court has not intended to express any opinion upon any matter of fact, and if you have observed anything which you may have interpreted as the Court's opinion as to any matter of fact, you must wholly disregard it.

After you retire to the jury room, you should select one of your members as your Presiding Juror. Any member of the jury may serve as Presiding Juror. It is that person's duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form and signing the same as your Presiding Juror.

At this time you will confine your deliberations solely to the issue of whether the Defendant is guilty or not guilty of the offense set forth in this charge.

Should the jury desire to have any or all of the admitted exhibits delivered to you for your deliberations, your Presiding Juror shall so notify the Court in writing and the requested exhibits will be delivered.

After you have retired, you may communicate with the Court in writing through the bailiffs who have you in charge. Your written communication must be signed by the Presiding Juror. Do not attempt to talk to the bailiffs, the attorneys, or the Court regarding any question you may have concerning the trial of the case.

After you have reached a unanimous verdict or if you desire to communicate with the Court, please use the jury call button on the wall and one of the bailiffs will respond.

Scott Wisch, Presiding Judge
372nd District Court
Tarrant County, Texas

No. C-372-W012470-0849816-D

EX PARTE	)(	IN THE 372nd JUDICIAL
	)(	DISTRICT COURT OF
JERRY LEE FLORES	)(	TARRANT COUNTY, TEXAS

PROPOSED FINDINGS AND ORDER

COMES NOW, the 372nd District Court and makes the following findings of fact and conclusions of law. The Court has reviewed the application for this Writ of Habeas Corpus, the State's Response, the clerk's record (CR), the trial court record (RR), the record on the Hearing on the Validity of Priors Offered by State in An Attempt to Establish Harmlessness of Applicant's Illegal Sentence, and the proposed memoranda and findings of fact and conclusions of law submitted by both parties.

The Applicant raised two grounds for relief: 1) the life sentence is outside the range of punishment for the conviction and is an illegal sentence, and 2) trial counsel delivered ineffective assistance at trial. See Application p. 6-9.

On September 25, 2024, the Court of Criminal Appeals remanded this cause of action back to the trial court to "make findings of fact and conclusions of law as to whether Applicant's sentence was enhanced with non-final felony convictions." The Court also directed the trial court to "determine whether Applicant has different final felony convictions which could have been used to enhance the punishment range." The Court additionally ordered the trial court to "make any other findings and conclusions that it deems appropriate in response to Applicant's claim." See Ex parte Flores, No. WR-69, 159-072024 WL 4284226, at *2 (Tex. Crim. App. September 25, 2024).

GENERAL FINDINGS OF FACT

1. On June 26, 2002, the grand jury indicted Applicant for Driving While Intoxicated – Felony Repetition with a Habitual Offender Notice. See Indictment.
2. The indictment alleged that the instant offense took place on or about October 24, 2001 in Tarrant County, Texas. See Indictment.
3. The indictment also alleged that, prior to the instant offense, the Defendant had been convicted of the offense of Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor on February 23, 1993 in the District Court of Cherokee County, Oklahoma in cause number **CRF -93-13**. See Indictment.
4. The indictment further alleged that, prior to the instant offense, the Defendant had been convicted of the offense of Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor on April 6, 1988 in the District Court of Cherokee County, Oklahoma in cause number **CRF-88-46**. See Indictment.
5. The Habitual Offender Notice alleged that, prior to the instant offense and the jurisdictional convictions, the Defendant had been finally convicted of the felony offense of Driving Under the Influence of Intoxicating Liquor-Second Offense in the District Court of Cherokee County, Oklahoma in cause number **CRF-90-65** on February 23, 1993, and that prior to the commission of the above offenses, the Defendant had been finally convicted of the felony offense of Unlawful Possession of Marijuana with Intent to Distribute in the District Court of Cherokee County, Oklahoma in cause number **CRF-89-187** on February 15, 1990. See Indictment.
6. The indictment incorrectly alleged that **CRF-89-187** became final on or before February 15, 1990. **CRF-89-187** became final on July 25, 1991, the date the Applicant's probation was revoked. See State's Additional Exhibit, p. 106 (Order Revoking Suspended Sentence and Commitment, No. **CRF-89-87.)**
7. The alleged offense date of **CRF-90-65** was May 12, 1990. See State's Additional Exhibit, p. 107 (Information, No. CRF-90-65).
8. Applicant pled true to the Habitual Offender Notice. See Indictment; [6 RR 2; S. Ex. 1 at 33, 37].

9. On January 4, 2012, this Court explicitly found that the offense in **CRF-90-65** did not occur after Applicant was finally convicted in Cause Number CRF-89-187 and Cause Numbers **CRF-89-187** and **CRF-90-65** are not sequential. See State's Additional Exhibits, Exhibit 1: Trial Court's File, *Ex. parte Jerry Lee Flores*, No. C-372-008969-0849819-A, p. 253, 261, 286 (emphasis added).
10. Applicant's sentence was enhanced with non-sequential final felony convictions.
11. The jury found Applicant guilty of the Felony DWI Offense as charged in the indictment, found the Habitual Offender Notice true, and sentenced him to life in prison. See Judgment.

Whether Applicant has different final felony convictions which could have been used to enhance the punishment range

1. At trial, the Applicant stipulated to the two prior convictions alleged for jurisdictional purposes: **CRF-93-13** and **CRF-88-46**. [4 RR 2-3; S.Ex. 24]; see also State's Third Additional Exhibits, State's Habeas exhibit 4; State's Trial Exhibit 24, p.4.
2. Applicant was finally convicted in Cause Number **CRF-89-187** on July 25, 1991 when his probation was revoked. See State's Additional Exhibit, p. 106 (Order Revoking Suspended Sentence and Commitment, No. **CRF-89-87**).
3. Cause number **CRF-93-13** is a final felony conviction that was committed on January 15, 1993. See State's Third Additional Exhibit, State's Habeas Exhibit 9; Information, No. CRF-93-13, p. 25.
4. Cause number **CRF-93-13** is a final felony conviction that is sequential to Cause Number **CRF-89-187**.
5. Certified copies of the judgments and citations from Cause Numbers **95-T-1566** and **95-T-1220** were admitted at trial during the punishment phase of trial without objection. [6 RR 34; E.Ex. 25 at 2, 4-5, 10, 13-14]; see State's Second Additional Exhibit, State's Habeas Exhibit 3, p. 49, 51-52, 57, 60-61.
6. Cause Number **95-T-1566** is a final November 1995 misdemeanor conviction for an Oklahoma DUI. [S.Ex. 25 at 10, 13-14]; See State's Second Additional Exhibits, State's Habeas Exhibit 3, p. 57, 60-61.

7. Cause Number **95-T-1220** is a final September 1995 misdemeanor conviction for an Oklahoma DUI. [S.Ex. 25 at 2, 4-5] See State's Second Additional Exhibits, State's Habeas Exhibit 3, p. 10, 13-14.
8. Applicant's sister testified at trial and tied Applicant to the certified records of Cause Numbers **95-T-1566** and **95-T-1220**. [7 RR 33-34]; See State's Third Additional Exhibits, State's Habeas Exhibit 7: Partial Trial Reporter's Record, p. 16-17.
9. Applicant did not allege at trial that any of the prior convictions used against him (Cause Numbers **CRF-89-187**, **CRF-93-13**, **CRF-88-46**, **CRF-90-65**, **95-T-1220**, and **95-T-1566**) are invalid. [4 RR 2-3; 6 RR 2; 6 RR 34; S. Ex. 1, 24, 25]
10. Applicant presents no evidence that said prior convictions are invalid. (See Reporter's Record on Writ Hearing on December 6, 2024.)
11. Applicant did not allege at trial that he was not the defendant convicted in any of the prior convictions used against him (Cause Numbers **CRF-89-187**, **CRF-93-13**, **CRF-88-46**, **CRF-90-65**, **95-T-1220**, and **95-T-1566**). [4 RR 2-3; 6 RR 2; 6 RR 34; S. Ex. 1, 24, 25]
12. Applicant presents no evidence that he is not the defendant convicted in any of the prior convictions used against him. (See Reporter's Record on Writ Hearing on December 6, 2024.)

CONCLUSIONS OF LAW

General Writ Law

1. In a habeas proceeding, the burden of proof is on the applicant. *Ex parte Rains*, 555 S.W.2d, 478, 481 (Tex. Crim. App. 1977).
2. An applicant "must prove by a preponderance of the evidence that the error contributed to his conviction or punishment." *Ex parte Williams*, 65 S.W.3d 656, 658 (Tex. Crim. App. 2001).
3. Relief may be denied if applicant states only conclusions, and not specific facts. *Ex parte McPherson*, 32 S.W. 3d 860, 861 (Tex. Crim. App. 2000). In addition, an applicant's sworn allegations alone are not sufficient to prove his claims. *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex. Crim. App. 1988).

Whether Applicant's sentence was enhanced with non-final felony convictions

1. "[A] defect which renders a sentence void may be raised at any time." *Ex parte Rich,* 194 S.W.3d 508, 514 (Tex. Crim. App. 2006) (quotation omitted).
2. Failure to properly allege two sequential prior felonies in the habitual offender paragraph *may* render a sentence void. *Ex parte Rich*, 194 S.W.3d 508, 514 (Tex. Crim. App. 2006) (emphasis added).
3. The State improperly alleged two sequential prior felony convictions in the habitual offender paragraph of Applicant's indictment.
4. Applicant's sentence was improperly enhanced with non-sequential final felony convictions.

Whether Applicant has different final felony conviction which could have been used to enhance the punishment range

1. Habeas proceedings are vastly different from appellate proceedings. For example, only jurisdictional, fundamental, and constitutional violations are cognizable in Article 11.07 habeas proceedings. See *Ex parte McCain*, 67 S.W.3d 204, 210 (Tex. Crim. App. 2002).
2. "A claim of an illegal sentence is cognizable on a writ of habeas corpus." See *Ex parte Rich*, 194 S.W.3d 508, 511 (Tex. Crim. App. 2006).
3. "An illegal sentence is distinguishable from a procedural irregularity or an inaccurate judgment, neither of which warrant relief on a writ of habeas corpus." See *Ex parte Rich*, 194 S.W.3d 508, 511 (Tex. Crim. App. 2006).
4. "First on direct appeal, neither party has the burden to prove harm, but in habeas proceedings, a defendant has the burden to demonstrate harm. See *Ovalle v. State*, 13 S.W.3d 774, 787 (Tex. Crim. App. 2000). Second, habeas is an extraordinary remedy premised on equity and no on error correction as is the focus of direct appeal. *See Blanton v. State*, 369 S.W.3d 894, 903 (Tex. Crim. App. 2012). Third, in determining whether relief is warranted in habeas proceedings, the court reviews not only evidence contained in the appellate record, but also evidence received beyond that record. See *Rouse, v. State*, 300 S.W.3d 754, 762 n. 17(Tex. Crim. App. 2009)." See *Ex parte Parrott*, 396 S.W.3d 531, 534 n. 6 (Tex. Crim. App. 2013).
5. As the Parrott court noted, while evaluating evidence beyond the appellate record can benefit "defendants by enabling them to introduce new evidence

favorable to them, it may also subject them to the introduction of unfavorable evidence." *Parrott* at 535.

6. While on direct appeal an appellant may be entitled to relief merely by showing improper enhancement (through a sufficiency of the evidence claim), an applicant must demonstrate harm at the habeas level for an illegal sentence claim. *See Ex parte Parrott*, 396 S.W.3d 531, 536-37, (Tex. Crim. App. 2013); *Bledsoe v. State*, 480 S.W.3d 638, 641 (Tex. App. – Texarkana 2015, pet. ref'd)("Parrott recognized that Jordan and other cases involving direct appeals holding that sufficiency of the evidence error is not subject to a harm analysis are inherently distinct from habeas corpus proceedings."); see also *Jordan v. State*, 256 S.W.3d 286, 293 (Tex. Crim. App. 2008) (No harm analysis required for a sufficiency review).
7. The Court in *Ex parte Parrott* was clear: "1) an applicant is harmed by an illegal sentence when the appellate and habeas records show that he has no other conviction that could support the punishment range within which he was sentenced, and 2) an applicant is not harmed by an illegal sentence when the appellate and habeas records show that there was another conviction that could properly support the punishment range within which he was sentenced." *Parrott* at p. 536.
8. In *Ex parte Hill*, the Court of Criminal Appeals echoed the holding from Parrrot that, "[A]n applicant is not harmed by an illegal sentence if his actual criminal history supports the rang of punishment in which he was sentenced, *Ex parte Hill*, 632 S.w.3d 547, 557 (Tex. Crim. App. 2021).
9. Ex parte Parrott applies to subject-matter jurisdiction errors that render a sentence illegal. See Ex parte Rodgers, 598 S.W.3d 262, 267, 268 (Tex. Crim. App. 2020) ("[E]ven errors that might affect jurisdiction are not automatically insulated from a harm analysis.").
10. The Court in Rodgers further recognized the propriety of applying the Parrott rule of demonstrating harm "[e]ven in the face of a claim that may have a jurisdictional dimension." Rodgers at 268.
11. "The harm associated with an illegal sentence turns only on whether an applicant's sentence is within the range set by law, and [an applicant] cannot show that the was harmed by his illegal sentence... because his actual criminal history supports" that range of punishment. Ex parte Hill, 632 S.W.3d 547, 559 (Tex. Crim. App. 2021).

12. A DWI "is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted" of two or more DWIs. See Texas Penal Code Sec. 49.09(b)(2).
13. A prior Oklahoma misdemeanor DUI conviction can be used to enhance a Texas DWI to the level of felony because "the Oklahoma DUI statute is substantially similar to the Texas DWI statute." *Smith v. State*, 401 S.W.3d 915, 920 (Tex. App. – Texarkana 2013, pet. ref'd).
14. The State may use prior convictions for jurisdictional enhancement if the State proves beyond a reasonable doubt that 1) a prior conviction exists and 2) the applicant is linked to that conviction. See *Ex parte Rodgers*, 598 S.W.3d at 269, (citing *Flowers v. State*, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007). But, "[t]he evidence linking a defendant to a prior conviction may be circumstantial, and the State may prove it 'in a number of different ways[.] Id. (citation omitted).
15. The State could have properly used Applicant's prior Oklahoma DUI convictions in Cause Numbers **CRF-88-46**, **CRF-90-65**, **95-T-1220**, and **95-T-1566** as jurisdictional priors to support the third-degree felony DWI.
16. "(d) Except as provided by Subsection (e)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under this subsection." Texas Penal Code Section 12.42(d).
17. The State could have properly used Applicant's prior sequential final felony convictions in Cause Numbers **CRF-89-187** and **CRF-93-13** as the habitual offender priors.
18. The Applicant has the following available final convictions which could be used in the following manner:

Type	Cause Number	Conviction Date	Offense Date	Exhibit # at Trial	Exhibit # on Habeas
Habitual	CRF-89-187	7/25/91		Indict (Hab) True Plea [6 RR 2]; SX 1 @37	State's Habeas Ex. 2, 7
Habitual	CRF-93-13	2/23/93	1/15/93	Indict (Juris) Stipulation [4 RR 2-3]; SX 24; SX 1 @ 35	State's Habeas Ex. 2,4
Jurisdictional	CRF-88-46	4/6/88		Indict (Juris) Stipulation [4 RR 2-3]; SX24; SX 1 @ 40	State's Habeas Ex. 2, 4
Jurisdictional	CRF-90-65	2/23/93	5/12/90	Indict (Hab) True Plea [6 RR 2]; SX1 @33	State's Habeas Ex. 2, 7
Jurisdictional	95-T-1220	9/5/95	9/4/95	No objection [6 RR 34] SX25 @2	State's Habeas Ex. 3, 7
Jurisdictional	95-T-1566	11/20/95	11/19/95	No objection [6 RR 34]; SX25@10	State's Habeas Ex. 3, 7

19. Applicant's actual criminal history supports his life sentence.
20. Applicant had a different final felony conviction that could have been used to enhance this punishment range to life.

Additional conclusions relevant to Applicant's claim

1. "[A]ppellate courts will not consider any error which counsel for the accused could have called, but did not call, to the attention of the trial court at the time when such error could have been avoided or corrected by the trial court." *Ex parte Crispen*, 777 S.W.2d 103, 105 (Tex. Crim. App. 1989) (citing Gibson v. State, 726 S.W.2d 129 (Tex. Crim. App. 1987)).
2. Generally, a failure to object during trial will preclude habeas review of a claim just as it would on direct appeal. *Ex parte Crispen*, 777 S.W.2d 103, 105 (Tex. Crim. App. 1989).
3. "[A]lmost all error – even constitutional error—may be forfeited if the appellant failed to object." *Fuller v. State*, 253 S.W.3d 220, 232 (Tex. Crim. App. 2008).
4. Because Applicant pleaded true at trial to the validity of prior convictions of Cause Numbers **CRF-89-187** and **CRF-90-65**, he cannot claim they are invalid now.
5. Because Applicant stipulated at trial to the validity of the prior convictions of Cause Numbers **CRF-93-13** and **CRF-88-46**, he cannot claim they are invalid convictions now.
6. Because Applicant allowed the admission of testimony and records of the prior convictions of Cause Numbers **95-T-1566** and **95-T-1220** without objection, he cannot claim they are invalid convictions now.
7. This Court recommends that Applicant's application be **DENIED**.

The court orders the clerk of this court to provide of a copy of the findings and order to Applicant, Jerry Lee Flores, by and through his attorney of record, Mr.

Matthew Smid, at matt@mattsmidlaw.com, and to the post-conviction section of the Tarrant County Criminal District Attorney's Office.

SIGNED AND ENTERED on this the 12th day of March, 2025.

Sheila Wynn
Criminal Law Magistrate
Tarrant County, Texas

APPENDIX B

1. STATE'S MEMORANDUM OF LAW IN OPPOSITION TO ARTICLE 11.07 APPLICATION FOR WRIT OF HABEAS CORPUS ON Cause No. W012470, No. C-372-W012470-0849816-D. filed 11/11/2024. 17 pages

2. STATE'S FIRST AMENDED MEMORANDUM of FINDINGS OF FACTS & CONCLUSIONS OF LAW filed 1/21/2025. 15 pages

W012470

FILED
TARRANT COUNTY
11/11/2024 4:29 PM
THOMAS A. WILDER
DISTRICT CLERK

NO. C-372-W012470-0849816-D

EX PARTE	§	**IN THE 372nd DISTRICT**
	§	
	§	**COURT OF**
	§	
JERRY LEE FLORES	§	**TARRANT COUNTY, TX**

STATE'S MEMORANDUM OF LAW IN OPPOSITION TO ARTICLE 11.07 APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, by and through its Tarrant County Criminal District Attorney, and in opposition to the Article 11.07 Application for Writ of Habeas Corpus respectfully states the following to the Court based on its information and belief:

I. APPLICANT ALLEGES THAT HIS SENTENCE IS ILLEGAL

On September 25, 2024, the Texas Court of Criminal Appeals remanded the Article 11.07 application for writ of habeas corpus of JERRY LEE FLORES (Applicant) to make findings whether Applicant's sentence was illegal. *See Ex parte Flores*, No. WR-69,159-07, 2024 WL 4284226, at *1 (Tex. Crim. App. Sept. 25, 2024). Specifically, the Texas Court of Criminal Appeals has ordered this Court to:

1. "make findings of fact and conclusions of law as to whether Applicant's sentence was enhanced with non-final felony convictions,"

2. "determine whether Applicant has different final felony convictions which could have been used to enhance the punishment range," and

3. "make any other findings and conclusions that it deems appropriate in response to Applicant's claim."

Id.

II. THE APPLICABLE FACTS ARE NOT IN DISPUTE; APPLICANT'S SENTENCE IS ILLEGAL.

On August 21, 2002, Applicant was convicted by a jury of the third-degree felony offense of driving while intoxicated with felony repetition. *See* Judgment, No. 0849816D. Because Applicant pled true to the habitual offender notice, the jury assessed confinement for life in the Texas Department of Criminal Justice-Institutional Division. *See* Judgment.

On January 4, 2012, this Court explicitly found (during the habeas proceeding of Applicant's first Article 11.07 application for writ of habeas corpus in 2012) that Applicant's sentence was improperly enhanced. *See* State's Additional Exhibit, Exhibit 1: Trial Court's File, *Ex parte Jerry Lee Flores*, No. C-372-008969-0849819-A (State's Exhibit 1), p. 253-54, 260-61,

286.[1] Specifically, this Court adopted the following applicable findings of fact and conclusions of law:

FINDINGS OF FACT

. . .

21. The habitual offender notice alleged that Applicant had been finally convicted in Oklahoma of felony offenses in Cause Numbers CRF-89-187 and CRF-90-65. *See* Indictment.

22. Applicant received probation in Cause Number CRF-89-187 on February 15, 1990. [S.Ex. 1]

23. Applicant's probation was revoked on July 25, 1991. *See* Memorandum, Support Appendix for Grounds Three and Four, p. 13.

24. The alleged offense date of Cause Number CRF-90-65 was May 12, 1990. *See* Memorandum, Support Appendix for Grounds Three and Four, p. 15.

25. The offense in Cause Number CRF-90-65 did not occur after Applicant was finally convicted in Cause Number CRF-89-187.

26. *Cause Numbers CRF-89-187 and CRF-90-65 are not sequential.*

. . .

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[1] For clarity, the page citation to the State's Exhibits will be to the page where the document is found within the .pdf of State's Additional Exhibits, State's Second Additional Exhibits, or State's Third Additional Exhibits and not any previously bate-stamped page number.

CONCLUSIONS OF LAW

. . .

27. *Applicant's prior convictions in Cause Numbers CRF-89-187 and CRF-90-65 can be used for enhancement but not together as they are not sequential.*

See State's Exhibit 1, p. 253, 261, 286 (Emphasis added). Therefore, there is no dispute regarding the Texas Court of Criminal Appeals first inquiry: **Yes, Applicant's sentence was enhanced with non-final felony convictions.**

Likewise, the facts are not in dispute regarding Applicant's criminal history.[2] Judgments of the following prior convictions were admitted at trial:

CAUSE NUMBER	CONVICTION DATE	OFFENSE DATE	ADMITTED (TRIAL)
CRF-88-46 (fel)	4/6/1988		Stipulation [4 RR 2-3; SX 24] [SX 1 at p. 40]
CRF-89-187 (fel)	7/25/1991		True Plea [6 RR 2] [SX 1 at p. 37]
CRF-93-13 (fel)	2/23/1993	1/15/1993	Stipulation [4 RR 2-3; SX 24]

[2] As shown, Applicant did not contest the validity of these prior convictions at trial. Nor does Applicant appear to contest their validity now. Applicant only contests whether Applicant's entire criminal history, including the convictions previously alleged in the jurisdictional enhancement paragraph of the Indictment, are available for consideration in answering the Texas Court of Criminal Appeals' second inquiry: "[w]hether Applicant has different final felony convictions which could have been used to enhance the punishment range." *See* Application; Memorandum of Law in Support of Application for Writ of Habeas Corpus (Memorandum).

			[SX 1 at p. 35]
CRF-90-65 (fel)	2/23/1993		True Plea [6 RR 2] [SX 1 at p. 33]
95-T-1220 (misd)	09/5/1995		No objection [6 RR 34] SX 25 at p. 2
95-T-1566 (misd)	11/20/1995		No objection [6 RR 34] SX 25 at p. 10

See State's Second Additional Exhibits; State's Third Additional Exhibits.

III. HABEAS CORPUS RELIEF IS VERY LIMITED; ILLEGAL SENTENCE IS COGNIZABLE BUT SUBJECT TO A HARM ANALYSIS.

Habeas proceedings are vastly different from appellate proceedings. For example, only jurisdictional, fundamental, and constitutional violations are cognizable in Article 11.07 habeas proceedings. *See Ex parte McCain*, 67 S.W.3d 204, 210 (Tex. Crim. App. 2002). While sufficiency of the evidence is not cognizable[3], "a claim of an illegal sentence is cognizable on a writ of habeas corpus." *See Ex parte Rich*, 194 S.W.3d 508, 511 (Tex. Crim. App. 2006). "An illegal sentence is distinguishable from a procedural irregularity or an inaccurate judgment, neither of which warrant relief on a writ of habeas corpus." *Id.*

---

3 *See Ex parte McLain*, 869 S.W.2d 349, 350 (Tex. Crim. App. 1994).

In addition, claims are reviewed differently. As the Texas Court of Criminal Appeals explained in *Ex parte Parrott*,

> First, on direct appeal, neither party has the burden to prove harm, but in habeas proceedings, a defendant has the burden to demonstrate harm. *See Ovalle v. State*, 13 S.W.3d 774, 787 (Tex. Crim. App. 2000). Second, habeas is an extraordinary remedy premised on equity and not on error correction as is the focus of direct appeal. *See Blanton v. State*, 369 S.W.3d 894, 903 (Tex. Crim. App. 2012). Third, in determining whether relief is warranted in habeas proceedings, the court reviews not only evidence contained in the appellate record, but also evidence beyond that record. *See Rouse v. State*, 300 S.W.3d 754, 762 n. 17 (Tex. Crim. App. 2009).

See Ex parte Parrott, 396 S.W.3d 531, 534 n. 6 (Tex. Crim. App. 2013). Therefore, while on direct appeal an appellant may be entitled to relief merely by showing improper enhancement (through a sufficiency of the evidence claim), an applicant must demonstrate harm at the habeas level for an illegal sentence claim. *See id.* at 536-37; *Bledsoe v. State*, 480 S.W.3d 638, 641 (Tex. App.—Texarkana 2015, pet. ref'd) ("*Parrott* recognized that *Jordan* and other cases involving direct appeals holding that sufficiency of the evidence error is not subject to a harm analysis are inherently distinct from habeas corpus proceedings."); *see also Jordan v. State*, 256 S.W.3d 286, 293 (Tex. Crim. App. 2008) (No harm analysis required for a sufficiency review).

Therefore, Applicant's illegal sentence claim is cognizable in this application; however, he must demonstrate harm to be entitled to relief.

IV. BECAUSE APPLICANT'S SENTENCE FALLS WITHIN HIS "ACTUAL CRIMINAL HISTORY," APPLICANT HAS FAILED TO DEMONSTRATE HARM.

A. The proper standard for Applicant's illegal sentence claim was announced in *Ex parte Parrott* and reiterated recently in *Ex parte Adams*.

The Court of Criminal Appeals specifically pointed to *Ex parte Parrott* when it ordered this Court to determine whether Applicant had other final felony convictions which could have been used for enhancement. *See Ex parte Flores*, No. WR-69,159-07, 2024 WL 4284226, at *1 (Tex. Crim. App. Sept. 25, 2024). In *Ex parte Parrott*, the Texas Court of Criminal Appeals clarified *Ex parte Rich* and held as follows:

> We conclude that *Rich* stands for the propositions that, in general,
>
> > (1) an applicant is harmed by an illegal sentence when the appellate and habeas records show that he has no other conviction that could support the punishment range within which he was sentenced; and
> >
> > (2) an applicant is not harmed by an illegal sentence when the appellate and habeas records show that there was another conviction that could properly support the punishment range within which he was sentenced.

Ex parte Parrott, 396 S.W.3d at 536 (citation omitted). As recently as November 6, 2024, the Texas Court of Criminal Appeals reminded the bench and bar that the inquiry is "whether an improper enhancement was harmless because there was another usable conviction." *Ex parte Adams*, No. WR-93,753-01, 2024 WL 4702330, at *2 (Tex. Crim. App. Nov. 6, 2024) (dicta).

Therefore, "an applicant is not harmed by an illegal sentence if his *actual criminal history* supports the range of punishment in which he was sentenced." *Ex parte Hill*, 632 S.W.3d 547, 557 (Tex. Crim. App. 2021) (emphasis added).

B. *Ex parte Rodgers* applies *Parrott* to jurisdictional paragraphs.

In *Ex parte Rodgers*, the Texas Court of Criminal Appeals expressly held that *Parrott* applies to subject-matter jurisdiction errors that render a sentence illegal. *See Ex parte Rodgers*, 598 S.W.3d 262, 267 (Tex. Crim. App. 2020). "[E]ven errors that might affect jurisdiction are not automatically insulated from a harm analysis." *Id.* at 268. The Texas Court of Criminal Appeals did not limit its holding in the published case to

Ex Parte Hill 631 SW3) 547 (Tex. Crim App. 2021) at 554:

It is True that Applicant's sexual-assault-of-a-child sentence cannot be enhanced To automatic life imprisonment based on his actual criminal history, But if That controlled the laches inquiry, laches would apply to all illegal-sentence Claims no matter how short the delay in challenging the sentence if the applicants actual criminal history did not support the enhanced Punishment range. That reasoning subverts the Proper scope of the laches inquiry, and it is at odds with Parrott. 396 SW3 at 536, in which we held that an applicant can show harm from an illegal sentence by showing that he has no other conviction to support the Punishment range within which he was sentenced. If the State is correct, Parrott and its Progeny are meaningless because no applicant harmed by an illegal sentence could ever Prove harm, Laches would Prevent Consideration of the claim. After reviewing the Parties' arguments and the entire record in this case we conclude that the totality of the circumstances weigh in favor of not applying laches to Applicant's illegal-sentence claims.

only *Rodgers* or cases where the applicant pled or had prior knowledge of errors. *Id.* at 268-71.

Therefore, *Parrott* applies to jurisdictional paragraphs.

C. The harm analysis of *Parrott* and *Rodgers* still applies even when an applicant has been convicted by a jury because the issue is not whether the evidence was sufficient at trial but whether the sentence falls within the range of punishment allowed by the applicant's "actual criminal history."

Applicant argues that his case is distinguishable from *Ex parte Parrott* and *Ex parte Rodgers* because this was a jury trial. *See* Memorandum, p. 13-15. However, the Texas Court of Criminal Appeals has applied the harm standard of *Parrott* to jury cases. *See, e.g., Ex parte Hill*, 632 S.W.3d 547, 559 (Tex. Crim. App. 2021) ("We conclude that *Parrott* controls" in jury trial cases.). It is reasonable, then, that *Ex parte Rodgers* would equally apply to jury trial cases because the harm is not plea specific. Instead,

> The harm associated with an illegal sentence turns on *only* whether an applicant's sentence is within the range set by law, and [an applicant] cannot show that he was harmed by his illegal sentence . . . *because his actual criminal history supports*" that range of punishment.

Ex parte Hill, 632 S.W.3d 547, 559 (Tex. Crim. App. 2021) (emphasis added).

Applicant's conviction by a jury as opposed to a guilty plea can only be relevant to the extent that it informs the question of whether his "actual criminal history" supports his conviction and enhancements. *See, e.g., Ex parte Parrott*, 396 S.W.3d at 534 (The State's evidence must establish that the applicant has been previously convicted of other appropriate convictions.). If the records establish Applicant has proper prior convictions, then whether Applicant was convicted by a jury or a plea of guilty is irrelevant.

In other words, the question is one of harm to Applicant, who could have been lawfully sentenced within the range of punishment the Court found applicable at sentencing, *not* of the State's claimed failure to prove to a jury the validity of unchallenged priors or the jury's alleged failure to make a finding on the unchallenged priors. Notably, Applicant made no attempt to challenge the validity of any of his priors.

D. Considering Applicant's "actual criminal history" as a whole, Applicant's sentence falls within the allowable punishment range.

1. *Considering Applicant's "actual criminal history," Applicant has two additional prior DWI misdemeanor convictions (and the felony DWI alleged in the habitual offender paragraph) which could have been used to replace the prior convictions alleged in the jurisdictional paragraph.*

As explained above, any error in the jurisdictional paragraph is harmless just as it is harmless if the error were in the punishment enhancement notice under *Ex parte Rodgers*. Here, the State presents two additional prior Oklahoma misdemeanor DUI convictions that could have been used for jurisdictional enhancement.

First, prior Oklahoma misdemeanor DUI convictions can be used to enhance a Texas DWI to the level of a felony because "the Oklahoma DUI statute is substantially similar to the Texas DWI statute." *Smith v. State*, 401 S.W.3d 915, 920 (Tex. App.—Texarkana 2013, pet. ref'd). Applicant does not contest this. *See* Application; Memorandum.

Second, the State may use prior convictions for jurisdictional enhancement if the State proves beyond a reasonable doubt that (1) a prior conviction exists and (2) the applicant is linked to that conviction. *See Ex parte Rodgers*, 598 S.W.3d at 269 (citing *Flowers v. State*, 220 S.W.3d 919,

921 (Tex. Crim. App. 2007). But "the evidence linking a defendant to a prior conviction may be circumstantial, and the State may prove it 'in a number of different ways[.]'". *Id.* (citation omitted).

Here, certified copies of the two prior Oklahoma misdemeanor DUI judgments were admitted during the punishment phase of trial *without objection*: 95-T-1566 and 95-T-1220. *See* State's Second Additional Exhibits, Exhibit 3: State's Trial Exhibit 25 (State's Exhibit 3), p. 49, 57. Not only were certified copies of the judgments admitted at trial, the original ticket, and testimony from Applicant's sister tying Applicant to the records, were admitted. *See* State's Exhibit 3, p. 49, 51, 57, 60; State's Third Additional Exhibits, Exhibit 7: Partial Trial Reporter's Record (State's Exhibit 7), p. 16-17 [7 RR 33-34]. Finally, Applicant does not contest the validity of these convictions. *See* Application; Memorandum. Therefore, the State has sufficiently demonstrated that Applicant has two additional prior Oklahoma misdemeanor DUI convictions that could have been used for purposes of jurisdiction.

Further, a prior Oklahoma felony DUI conviction was alleged in the habitual offender notice. *See* Indictment. CRF-90-65 could not be used for habitual purposes because it was not sequential to CRF-89-187; however, that does not prohibit it from being used as a prior DUI conviction for jurisdictional purposes. *See* State's Exhibit 2, p. 36; State's Exhibit 7, p. 14. And, because Applicant pled true to the habitual offender notice, including the CRF-90-65 conviction, the State has sufficiently demonstrated that Applicant has an additional prior felony DUI that could have been used for purposes of jurisdiction.

Applicant has at least three additional prior convictions that could have been used for jurisdictional purposes.

2. *Considering Applicant's "actual criminal history," including the prior convictions alleged in the jurisdictional paragraph, Applicant has a different final felony conviction which could have been used to enhance the punishment range.*

Because there are two additional Oklahoma misdemeanor DUI convictions, the State could have substituted those prior convictions for any improper jurisdictional-enhancement convictions. Because the Court looks to the "actual criminal history" of Applicant when determining whether his sentence falls within the available range of punishment, this Court should

hold that the convictions alleged in the jurisdictional paragraph are eligible for consideration as part of Applicant's "actual criminal history."

As such, CRF-93-13 could have been used for habitual offender purposes. CRF-89-187 was final on July 25, 1991 and CRF-93-13 was committed on or around January 15, 1993. *See* State's Exhibit 2, p. 38, 40; State's Third Additional Exhibits, Exhibit 4: State's Trial Exhibit 24 (State's Exhibit 4), p. 4; State's Exhibit 7, p. 14.

Therefore, the answer to the Texas Court of Criminal Appeals' inquiry is: **Yes, Applicant's CRF-93-13 is a different final felony conviction which could have been used to properly enhance the punishment range.**

V. APPLICANT'S APPLICATION SHOULD BE DENIED BECAUSE THE ERROR IS HARMLESS.

To succeed on his illegal sentence claim, Applicant must show (1) his sentence is illegal due to an improper enhancement and (2) his actual criminal history cannot support the sentence. *See Ex Parte Parrott*, 396 S.W.3d at 536. Here, Applicant's sentence was improperly enhanced by two non-sequential felony convictions. However, Applicant's prior felony (CRF-93-13) could have replaced the non-sequential felony (CRF-90-65)

and would have been properly sequential to CRF-89-187. CRF-93-13 was alleged as a jurisdictional prior but Applicant has two prior Oklahoma misdemeanor DUI convictions (95-T-1220 and 95-T-1566) and CRF-90-65 that could have been used instead of CRF-93-13 as jurisdictional priors. Because the appellate and habeas records establish that (1) the prior convictions exist and (2) they belong to Applicant, Applicant's conviction and sentence are supported by his "actual criminal history."

WHEREFORE, the State prays that this Court recommend that Applicant's illegal sentence claim be **DENIED**.

Respectfully submitted,

PHIL SORRELLS
Criminal District Attorney
Tarrant County

STEVEN W. CONDER
Assistant Criminal District Attorney
Chief, Post-Conviction

/s/ *ANDRÉA JACOBS*
ANDRÉA JACOBS
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CERTIFICATE OF SERVICE

A true copy of the above has been e-served to Applicant, Mr. Jerry Lee Flores, by and through his attorney of record, Mr. Matthew Smid, at matt@mattsmidlaw.com, on the 11th day of November, 2024.

/s/ *ANDRÉA JACOBS*
ANDRÉA JACOBS

CERTIFICATE OF COMPLIANCE

The total number of words in the foregoing is **2705**, as determined by the word count feature of Microsoft Office Word.

/s/ *ANDRÉA JACOBS*
ANDRÉA JACOBS

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Matt Smid		matt@mattsmidlaw.com	11/11/2024 4:29:08 PM	SENT

FILED
TARRANT COUNTY
1/21/2025 12:13 PM
THOMAS A. WILDER
DISTRICT CLERK

NO. C-372-W012470-0849816-D
[No. WR-69,159-07]

EX PARTE	§	**IN THE 372nd DISTRICT**
	§	
	§	**COURT OF**
	§	
JERRY LEE FLORES	§	**TARRANT COUNTY, TX**

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

The State proposes the following First Amended Memorandum, Findings of Fact, and Conclusions of Law regarding the issues raised in the present Application for Writ of Habeas Corpus.

MEMORANDUM

On June 5, 2024, JERRY LEE FLORES (Applicant) alleged in his Article 11.07 application for writ of habeas corpus that his confinement is illegal because (1) his life sentence was outside the range of punishment for his conviction and (2) he received ineffective assistance of counsel. *See* Application, p. 6-9. On September 25, 2024, the Texas Court of Criminal Appeals remanded the application back to the trial court to make specific findings as whether Applicant's sentence was illegal. *See Ex parte Flores*, No. WR-69,159-07, 2024 WL 4284226, at *1

(Tex. Crim. App. Sept. 25, 2024). Specifically, the Texas Court of Criminal Appeals has ordered this Court to:

1. "make findings of fact and conclusions of law as to whether Applicant's sentence was enhanced with non-final felony convictions,"

2. "determine whether Applicant has different final felony convictions which could have been used to enhance the punishment range," and

3. "make any other findings and conclusions that it deems appropriate in response to Applicant's claim."

Id. Considering Applicant's contentions and the evidence presented in the Writ Transcript, the Court should consider the following proposed findings of fact and conclusions of law:

FINDINGS OF FACT

Procedural Facts

1. On August 21, 2002, Applicant was convicted by a jury of the third-degree felony offense of driving while intoxicated (DWI) and felony repetition. *See* Judgment, No. 0849816D.

2. Applicant pled true to the habitual offender notice and the jury assessed punishment at confinement for life in the Texas Department of Criminal Justice – Institutional Division. *See* Judgment.

3. On November 6, 2003, the Second Court of Appeals affirmed the trial court's judgment. *See Flores v. State*, No. 02-02-340-CR, 2003 WL 22514656 (Tex. App.—Fort Worth Nov. 6, 2003, pet. ref'd).

4. On February 6, 2013, Applicant's first application for writ of habeas corpus was denied without written order on trial court's findings without a hearing. *See Ex parte Flores*, No. WR-69,159-04, No. C-372-008969-0849816-A (Tex. Crim. App. Feb. 6, 2013) (White Card).

5. On September 5, 2018, Applicant's second application for writ of habeas corpus was dismissed as a subsequent application. *See Ex parte Flores*, No. WR-69,159-05, No. C-372-W011320-0849816-B (Tex. Crim. App. Sept. 5, 2018) (White Card).

6. On February 21, 2024, Applicant's third application for writ of habeas corpus was dismissed as a subsequent application. *See Ex parte Flores*, No. WR-69,159-06, No. C-372-W012364-0849816-C (Tex. Crim. App. Feb. 21, 2024) (White Card).

Whether Applicant's sentence was enhanced with non-final felony convictions

7. The habitual offender notice alleged that Applicant had been finally convicted in Oklahoma of felony offenses in Cause Numbers CRF-89-187 and CRF-90-65. *See* Indictment.

8. Applicant pled true to the habitual offender notice. *See* Indictment; [6 RR 2; S.Ex. 1 33, 37].[1]

9. Applicant received probation in Cause Number CRF-89-187 on February 15, 1990. [S.Ex. 1]

10. Applicant's probation in Cause Number CRF-89-187 was revoked on July 25, 1991. *See* State's Additional Exhibit, p. 106 (Order Revoking Suspended Sentence and Commitment, No. CRF-89-87).

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1 For clarity, records to the original trial reporter's records will be [Vol.# RR Pg. #], original state's exhibits will be [S.Ex. #].

11. The alleged offense date of Cause Number CRF-90-65 was May 12, 1990. *See* State's Additional Exhibit, p. 107 (Information, No. CRF-90-65).

12. On January 4, 2012, this Court explicitly made the following applicable findings of fact and conclusions of law:

FINDINGS OF FACT

. . .

25. The offense in Cause Number CRF-90-65 did not occur after Applicant was finally convicted in Cause Number CRF-89-187.

26. *Cause Numbers CRF-89-187 and CRF-90-65 are not sequential.*

. . .

CONCLUSIONS OF LAW

. . .

27. *Applicant's prior convictions in Cause Numbers CRF-89-187 and CRF-90-65 can be used for enhancement but not together as they are not sequential.*

See State's Additional Exhibit, Exhibit 1: Trial Court's File, *Ex parte Jerry Lee Flores*, No. C-372-008969-0849819-A, p. 253, 261, 286 (emphasis added).[2]

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[2] For clarity, the page citation to the State's Habeas Exhibits will be to the page where the document is found within the .pdf of State's Additional Exhibits, State's Second Additional Exhibits, or State's Third Additional Exhibits and not any previously bate-stamped page number.

13. The offense in Cause Number CRF-90-65 did not occur after Applicant was finally convicted in Cause Number CRF-89-187.

14. Cause Numbers CRF-89-187 and CRF-90-65 are not sequential.

15. Applicant's sentence was enhanced with non-sequential final felony convictions.

Whether Applicant has different final felony convictions which could have been used to enhance the punishment range

16. The habitual offender notice alleges prior non-sequential final felony convictions: Cause Numbers CRF-90-65 and CRF-89-187. *See* Indictment.

17. At trial, Applicant pled true to the prior felony convictions alleged in the habitual offender notice. *See* Indictment; [6 RR 2; S.Ex. 1 at 33, 37].

18. Cause Number CRF-90-65 is an Oklahoma DUI final felony conviction. *See* Indictment; [6 RR 2; S.Ex. 1 at 40]; *see also* State's Second Additional Exhibits, State's Habeas Exhibit 2: State's Trial Exhibit 1, p. 36 (S.Ex. 1 at 33).

19. The jurisdictional enhancement notice alleges prior Oklahoma felony driving under the influence (DUI) convictions: Cause Numbers CRF-93-13 and CRF-88-46. *See* Indictment.

20. At trial, Applicant stipulated to the two prior convictions alleged for jurisdictional purposes. [4 RR 2-3; S.Ex. 24]; *see also* State's Third Additional Exhibits, State's Habeas Exhibit 4: State's Trial Exhibit 24, p. 4.

21. Applicant was finally convicted in Cause Number CRF-89-187 on July 25, 1991, when his probation was revoked. *See* State's Additional Exhibit, p. 106 (Order Revoking Suspended Sentence and Commitment, No. CRF-89-87).

22. Cause Number CRF-93-13 is a final felony conviction that was committed on January 15, 1993. *See* State's Third Additional Exhibits, State's Habeas Exhibit 9: Information, No. CRF-93-13, p. 25.

23. Cause Number CRF-93-13 is a final felony conviction that is sequential to Cause Number CRF-89-187.

24. Certified copies of the judgments and citations from Cause Numbers 95-T-1566 and 95-T-1220 were admitted at trial during the punishment phase of trial *without objection*. [6 RR 34; S.Ex. 25 at 2, 4-5, 10, 13-14]; *see* State's Second Additional Exhibits, State's Habeas Exhibit 3, p. 49, 51-52, 57, 60-61.

25. Testimony from Applicant's sister tying Applicant to the certified records of Cause Numbers 95-T-1566 and 95-T-1220 was admitted at trial. [7 RR 33-34]; *see* State's Third Additional Exhibits, State's Habeas Exhibit 7: Partial Trial Reporter's Record, p. 16-17.

26. Cause Number 95-T-1566 is a final November 1995 misdemeanor conviction for an Oklahoma DUI. [S.Ex. 25 at 10, 13-14]; *see* State's Second Additional Exhibits, State's Habeas Exhibit 3, p. 57, 60-61.

27. Cause Number 95-T-1220 is a final September 1995 misdemeanor conviction for an Oklahoma DUI. [S.Ex. 25 at 2, 4-5]; *see* State's Second Additional Exhibits, State's Habeas Exhibit 3, p. 10, 13-14.

28. The following is a chart Applicant's prior convictions admitted at trial:

CAUSE NUMBER	CONVICTION DATE	OFFENSE DATE	ADMITTED (TRIAL)
CRF-88-46 (felony DUI)	4/6/1988		Stipulation [4 RR 2-3; S.Ex 24] [S.Ex. 1 at 40]
CRF-89-187 (felony)	7/25/1991		True Plea [6 RR 2] [S.Ex. 1 at 37]
CRF-93-13 (felony)	2/23/1993	1/15/1993	Stipulation [4 RR 2-3; S.Ex 24] [S.Ex. 1 at 35]
CRF-90-65 (felony DUI)	2/23/1993		True Plea [6 RR 2] [S.Ex. 1 at 33]
95-T-1220 (misdemeanor DUI)	09/5/1995		No objection [6 RR 34] [S.Ex. 25 at 2]
95-T-1566 (misdemeanor DUI)	11/20/1995		No objection [6 RR 34] [S.Ex. 25 at 10]

Additional findings relevant to Applicant's claim

29. Applicant did not allege at trial that any of the prior convictions used against him (Cause Numbers CRF-89-187, CRF-93-13, CRF-88-46, CRF-90-65, 95-T-1220, 95-T-1566) are invalid. [4 RR 2-3; 6 RR 2; 6 RR 34; S.Ex. 1, 24, 25]

30. Applicant presents no evidence that the prior convictions admitted at trial are invalid.

31. Applicant did not allege at trial that he was not the defendant convicted in any of the prior convictions used against him (Cause Numbers CRF-89-187, CRF-93-13, CRF-88-46, CRF-90-65, 95-T-1220, 95-T-1566). [4 RR 2-3; 6 RR 2; 6 RR 34; S.Ex. 1, 24, 25].

32. Applicant presents no evidence that he is not the defendant convicted in any of the prior convictions used against him.

CONCLUSIONS OF LAW

General Writ Law

1. In a habeas corpus proceeding, the burden of proof is on the applicant. *Ex parte Rains*, 555 S.W.2d 478, 481 (Tex. Crim. App. 1977). An applicant "must prove by a preponderance of the evidence that the error contributed to his conviction or punishment." *Ex parte Williams*, 65 S.W.3d 656, 658 (Tex. Crim. App. 2001).

2. Relief may be denied if the applicant states only conclusions, and not specific facts. *Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000). In addition, an applicant's sworn allegations alone are not sufficient to prove his claims. *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex. Crim. App. 1988).

Whether Applicant's sentence was enhanced with non-final felony convictions

3. "[A] defect which renders a sentence void may be raised at any time." *Ex parte Rich*, 194 S.W.3d 508, 513 (Tex. Crim. App. 2006) (quotation omitted).

4. Failure to properly allege two sequential prior felonies in the habitual offender statute *may* render a sentence void. *Ex parte Rich*, 194 S.W.3d 508, 514 (Tex. Crim. App. 2006) (emphasis added).

5. The State improperly alleged two sequential prior felonies in the habitual offender statute.

6. Applicant's sentence was improperly enhanced with non-sequential final felony convictions.

Whether Applicant has different final felony convictions which could have been used to enhance the punishment range

7. Habeas proceedings are vastly different from appellate proceedings. For example, only jurisdictional, fundamental, and constitutional violations are cognizable in Article 11.07 habeas proceedings. *See Ex parte McCain*, 67 S.W.3d 204, 210 (Tex. Crim. App. 2002).

8. While sufficiency of the evidence is not cognizable[3], "a claim of an illegal sentence is cognizable on a writ of habeas corpus." *See Ex parte Rich*, 194 S.W.3d 508, 511 (Tex. Crim. App. 2006).

9. "An illegal sentence is distinguishable from a procedural irregularity or an inaccurate judgment, neither of which warrant relief on a writ of habeas corpus." *See Ex parte Rich*, 194 S.W.3d 508, 511 (Tex. Crim. App. 2006).

10. "First, on direct appeal, neither party has the burden to prove harm, but in habeas proceedings, a defendant has the burden to demonstrate harm. *See Ovalle v. State*, 13 S.W.3d 774, 787 (Tex. Crim. App. 2000). Second, habeas is an extraordinary remedy premised on equity and not on error correction as is the focus of direct appeal. *See Blanton v. State*, 369 S.W.3d 894, 903 (Tex. Crim. App. 2012). Third, in determining whether relief is warranted in habeas proceedings, the court reviews not only evidence contained in the appellate record, but also evidence beyond that record. *See Rouse v. State*, 300 S.W.3d 754, 762 n. 17 (Tex. Crim. App. 2009)." *See Ex parte Parrott*, 396 S.W.3d 531, 534 n. 6 (Tex. Crim. App. 2013).

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3 *See Ex parte McLain*, 869 S.W.2d 349, 350 (Tex. Crim. App. 1994).

11. While on direct appeal an appellant may be entitled to relief merely by showing improper enhancement (through a sufficiency of the evidence claim), an applicant must demonstrate harm at the habeas level for an illegal sentence claim. *See Ex parte Parrott*, 396 S.W.3d 531, 536-37 (Tex. Crim. App. 2013); *Bledsoe v. State*, 480 S.W.3d 638, 641 (Tex. App.—Texarkana 2015, pet. ref'd) ("*Parrott* recognized that *Jordan* and other cases involving direct appeals holding that sufficiency of the evidence error is not subject to a harm analysis are inherently distinct from habeas corpus proceedings."); *see also Jordan v. State*, 256 S.W.3d 286, 293 (Tex. Crim. App. 2008) (No harm analysis required for a sufficiency review).

12. "(1) [A]n applicant is harmed by an illegal sentence when the appellate and habeas records show that he has no other conviction that could support the punishment range within which he was sentenced; and (2) an applicant is not harmed by an illegal sentence when the appellate and habeas records show that there was another conviction that could properly support the punishment range within which he was sentenced." *Ex parte Parrott*, 396 S.W.3d 531, 536 (Tex. Crim. App. 2013) (citation omitted).

13. The Texas Court of Criminal Appeals has reminded the bench and bar that the proper illegal sentence inquiry is "whether an improper enhancement was harmless because there was another usable conviction." *Ex parte Adams*, No. WR-93,753-01, 2024 WL 4702330, at *2 (Tex. Crim. App. Nov. 6, 2024) (dicta).

14. "[A]n applicant is not harmed by an illegal sentence if his *actual criminal history* supports the range of punishment in which he was sentenced." *Ex parte Hill*, 632 S.W.3d 547, 557 (Tex. Crim. App. 2021) (emphasis added).

15. *Ex parte Parrott* applies to subject-matter jurisdiction errors that render a sentence illegal. *See Ex parte Rodgers*, 598 S.W.3d 262, 267, 268 (Tex. Crim. App. 2020) ("[E]ven errors that might affect jurisdiction are not automatically insulated from a harm analysis.").

16. "The harm associated with an illegal sentence turns on *only* whether an applicant's sentence is within the range set by law, and [an applicant] cannot show that he was harmed by his illegal sentence . . . *because his actual criminal history supports*" that range of punishment. *Ex parte Hill*, 632 S.W.3d 547, 559 (Tex. Crim. App. 2021) (emphasis added).

17. A DWI "is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted" of two or more DWIs. *See* Tex. Penal Code § 49.09(b)(2).

18. A prior Oklahoma misdemeanor DUI conviction can be used to enhance a Texas DWI to the level of a felony because "the Oklahoma DUI statute is substantially similar to the Texas DWI statute." *Smith v. State*, 401 S.W.3d 915, 920 (Tex. App.—Texarkana 2013, pet. ref'd).

19. The State may use prior convictions for jurisdictional enhancement if the State proves beyond a reasonable doubt that (1) a prior conviction exists and (2) the applicant is linked to that conviction. *See Ex parte Rodgers*, 598 S.W.3d at 269 (citing *Flowers v. State*, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007). But "the evidence linking a defendant to a prior conviction may be circumstantial, and the State may prove it 'in a number of different ways[.]'". *Id.* (citation omitted).

20. The State could have properly used Applicant's prior Oklahoma DUI convictions in Cause Numbers CRF-88-46, CRF-90-65, 95-T-1220, and 95-T-1566 as jurisdictional priors to support the third-degree felony DWI.

21. "(d) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under this subsection." Tex. Penal Code § 12.42(d).

22. The State could have properly used Applicant's prior sequential final felony convictions in Cause Numbers CRF-89-187 and CRF-93-13 as the habitual offender priors.

23. The following is a chart of Applicant's available prior convictions and how the State could have used them:

TYPE	CAUSE NUMBER	CONVICTION DATE	OFFENSE DATE
HABITUAL	CRF-89-187	7/25/1991 (rev)	
HABITUAL	CRF-93-13	2/23/1993	1/15/93
JURISDICTIONAL	CRF-88-46	4/6/1988	
JURISDICTIONAL	CRF-90-65	2/23/1993	
JURISDICTIONAL	95-T-1220	9/5/1995	
JURISDICTIONAL	95-T-1566	11/20/1995	

24. Applicant's actual criminal history supports his life sentence.

25. Applicant had a different final felony conviction that could have been used to enhance this punishment range to life.

Additional conclusions relevant to Applicant's claim

26. "[A]ppellate courts will not consider any error which counsel for the accused could have called, but did not call, to the attention of the trial court at the time when such error could have been avoided or corrected by the trial court." *Ex parte Crispen*, 777 S.W.2d 103, 105 (Tex. Crim. App. 1989) (citing *Gibson v. State*, 726 S.W.2d 129 (Tex. Crim. App. 1987)).

27. Generally, a failure to object during trial will preclude habeas review of a claim just as it would on direct appeal. *Ex parte Crispen*, 777 S.W.2d 103, 105 (Tex. Crim. App. 1989).

28. "[A]lmost all error—even constitutional error—may be forfeited if the appellant failed to object." *Fuller v. State*, 253 S.W.3d 220, 232 (Tex. Crim. App. 2008).

29. Because Applicant pleaded true at trial to the validity of prior convictions of Cause Numbers CRF-89-187 and CRF-90-65, he cannot claim they are invalid convictions now.

30. Because Applicant stipulated at trial to the validity of the prior convictions of Cause Numbers CRF-93-13 and CRF-88-46, he cannot claim they are invalid convictions now.

31. Because Applicant allowed the admission of testimony and records of the prior convictions of Cause Numbers 95-T-1566 and 95-T-1220 without objection, he cannot claim they are invalid convictions now.

32. This Court recommends that Applicant's application be **DENIED**.

WHEREFORE, the State prays that this Court adopt these Proposed Findings of Fact and Conclusions of Law and recommend that Applicant's application be **DENIED**.

Respectfully submitted,

PHIL SORRELLS
Criminal District Attorney
Tarrant County

STEVEN W. CONDER
Assistant Criminal District Attorney
Chief, Post-Conviction

/s/ *Andréa Jacobs*
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CERTIFICATE OF SERVICE

A true copy of the above has been e-served on Applicant, Mr. Jerry Lee Flores, by and through his attorney of record, Mr. Matthew Smid, at matt@mattsmidlaw.com on the 21st day of January, 2025.

/s/ *Andréa Jacobs*
Andréa Jacobs

CERTIFICATE OF COMPLIANCE

I certify that the total number of words in this State's Proposed Findings of Fact and Conclusions of Law is **3234** words as determined by Microsoft Office 365.

/s/ *Andréa Jacobs*
ANDRÉA JACOBS

APPENDIX C

1. INFORMATION on Cause No. CRF-89-187.
2. INFORMATION on Cause No. CRF-90-65 when it is COMMITTED
3. COURT ORDER REVOKING SUSPENDED SENTENCE of Cause CRF-89-187 on July 25,1991.

IN THE DISTRICT COURT IN AND FOR CHEROKEE COUNTY, STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff,
vs.
JERRY LEE FLORES,
Defendant

CASE NO. CRF-89-[redacted]

INFORMATION FOR COUNT I: UNLAWFUL POSSESSION OF CONTROLLED DRUG.
COUNT II: UNLAWFUL POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE

FILED
OCT 11 1989
4:34

INFORMATION

STATE OF OKLAHOMA, COUNTY OF CHEROKEE, ss:

I, the undersigned District Attorney of said County, in the name, by the authority, and on behalf of the State of Oklahoma, give information that on or about the 10th day of October, 1989 in said County of Cherokee and State of Oklahoma, one JERRY LEE FLORES did then and there COUNT I: unlawfully, willfully, knowingly and feloniously have in his possession and under his control a controlled dangerous substance in Schedule II of the Uniform Controlled Dangerous Substances Act of this State,

COUNT II: unlawfully, willfully and feloniously have in his possession and under his control Marihuana with the intent then and there to unlawfully deliver and distribute the same, said drug being classified as a controlled dangerous substance in Schedule I (C-10) of the Uniform Controlled Dangerous Substances Act of this State,

63-2-401(B-2)

contrary to the form and statute in such cases made and provided and against the peace and dignity of the state.

STATE OF OKLAHOMA, COUNTY OF CHEROKEE ss:
I do hereby solemnly swear that I have read the above and foregoing information, know the content thereof, and that the statements therein contained are true.

x [signature]

I hereby state that I have examined the facts herein and recommend that a warrant issue.

GERALD HUNTER, DISTRICT ATTORNEY

[signature]

APPENDIX C

STATE OF OKLAHOMA, Plaintiff,	)	IN THE DISTRICT COURT OF CHEROKEE COUNTY
vs.	)	Case No. CRF-90-65
JERRY LEE FLORES, Defendant.	)	

1990 MAY 15 AM

IN THE NAME AND BY AUTHORITY OF THE STATE OF OKLAHOMA

NOW COMES GERALD HUNTER, the duly qualified and acting District Attorney, in and for Cherokee County, State of Oklahoma, and gives the District Court of Cherokee County and State of Oklahoma to know and be informed that JERRY LEE FLORES did in Cherokee County and in the State of Oklahoma, on or about the 12th day of May, 1990, in the year of our Lord, One Thousand Nine Hundred and Ninety and anterior to the presentment hereof, commit the following crimes in the manner and form as follows, to-wit:

COUNT I: DRIVING UNDER THE INFLUENCE OF INTOXICANTS--SECOND OFFENSE said defendant did then and there unlawfully, wrongfully, willfully, knowingly and feloniously operate a certain motor vehicle, to-wit; a 1979 Ford pickup, bearing 1991 Oklahoma license number UZG-298, in Cherokee County, near the junction of US-62 and State Highway 10, while under the influence of intoxicating liquor after being previously convicted of the crime of Driving Under the Influence of Intoxicating Liquor on the 8th day of August, 1983, in the District Court of Adair County, State of Oklahoma, case number CRM-83-735,

47 O.S.A. Sec. 11-902-A

COUNT II: DRIVING WHILE LICENSE SUSPENDED said defendant did then and there willfully, wrongfully and knowingly operate a certain motor vehicle, to-wit: a 1979 Ford pickup, bearing 1991 Oklahoma license number UZG-298, operating said vehicle upon the public highways, in Cherokee County, Oklahoma, while the said defendant's Oklahoma driver's license was under suspension,

6-303A

contrary to the form and statute in such cases made and provided and against the peace and dignity of the state.

State of Oklahoma, County of Cherokee, ss
Shirley Glory, Court Clerk within and for Cherokee County, State of Oklahoma, do hereby certify that I have compared the foregoing instrument with the original now remaining on file and of record in this office, now that the same is a full, true and exact copy thereof, in witness whereof I have hereunto set my hand and affixed my official seal this 11 day of May 20 90
SHIRLEY GLORY, Court Clerk
By Deputy

GERALD HUNTER, DISTRICT ATTORNEY

By: Gregory Coulter
Assistant District Attorney

STATE OF OKLAHOMA, CHEROKEE COUNTY, ss

I, Jack Goss, being duly sworn on the oath, state that I have read the above and foregoing information and know the contents thereof, and that the facts stated herein are true.

RECORDED 411
BOOK ____ PAGE 152

Jack Goss

Subscribed and sworn to before me, the undersigned this 14th day of May, 1990.

My Commission Expires:
1-17-91

Notary Public

WITNESSES FOR THE STATE OF OKLAHOMA
Jerry Clay, OHP, 213 W. Delaware, Tahlequah, OK 74464
[illegible] Howard, P.O. Box 147, Hulbert, Ok 74471

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IN THE DISTRICT COURT OF CHEROKEE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

vs.

JERRY LEE FLORES,

Defendant.

Case No. CRF-89-187

ORDER REVOKING SUSPENDED SENTENCE
AND COMMITMENT

This matter comes on for hearing on the 25th day of July, 1991, on an Application to Revoke the Suspended Sentence of the above-named defendant herein. The defendant appearing in person and by his attorney of record, Dianne Barker;

The Court FINDS that the defendant, on the 13th day of September, 1990, after being fully advised of his constitutional rights and acknowledging that he understood the nature and consequences of his own acts, knowingly and voluntarily of his own free will, waived jury trial in this case, and after having been fully advised of his constitutional rights and acknowledging that he understood the nature and consequences of his acts, knowingly and voluntarily waived same, and entered a plea of guilty herein and thereupon was sentenced to serve a term of two (2) years as to CT. I and two (2) years as to CT. II to run concurrent in the Oklahoma State Penitentiary, which sentence was suspended by the Court under certain terms and conditions.

After having determined that said defendant has been duly and properly served with a copy of the said Application to Revoke said sentence heretofore suspended, and given notice of said hearing and having heard sworn testimony on the matters alleged therein, IT IS THEREFORE ORDERED BY THE COURT that the sentence heretofore suspended by revoked;

IT IS FURTHER ORDERED BY THE COURT that the defendant herein be and is committed to the custody of the Sheriff of Cherokee County, Oklahoma, to receive and safely keep and convey the said defendant to the Cherokee County Jail, recipient for the Cherokee County Jail, who will receive and safely keep the said defendant in said jail in execution of the sentence aforesaid and in conformity with the same for a period of time as aforesaid, to-wit: six (6) months as per plea agreement.

IT IS FURTHER ORDERED that the District Court Clerk furnish the Sheriff of Cherokee County, Oklahoma, with two duly certified copies of this judgment, sentence and order, with two (2) duly certified copies of this judgment, sentence and order, one of which shall be delivered to the keeper of said County Jail and the other to the Sheriff of this County with a full and true account of the execution of the same.

Lawrence Ray
JUDGE OF THE DISTRICT COURT

State of Oklahoma, County of Cherokee: ss
E. ANN LAMONS, Court Clerk within and for Cherokee County, State of Oklahoma, do hereby certify that I have compared the foregoing instrument with the original now remaining on file and of record in this office, now that the same is a full true and exact copy thereof.
In witness whereof I have hereunto set my hand and affixed my official seal this 13 day of Aug 19 91
E. ANN LAMONS, Court Clerk
By _____ Deputy

APPENDIX C

APPENDIX D

1. Excerpt of Trial ON MERITS STATE V. JERRY LEE FLORES VOLUME 6 pages 2-5 Proceedings Aug. 21,2002

2. OFFENDER Jerry Flores OK DOC#:170639- Flores Criminal History 1 of 2

Page 2

PROCEEDINGS
August 21, 2002
Wednesday
3:15 p.m.

(State's Exhibits Nos. 1-A and 25 marked)
(Open court, Defendant present, no jury)
THE COURT: All right. Outside the jury's presence, I'm going to have the remainder of the indictment read to the Defendant and counsel and accept his plea outside the jury's presence to the Habitual Offender Notice allegations.
You may proceed.
(Habitual Offender Notice read)
THE COURT: All right. Jerry Lee Flores, did you understand the allegations as read to you in what's labeled the Habitual Offender Notice of the indictment, sir?
THE DEFENDANT: Yes, Your Honor.
THE COURT: All right. To those allegations, you may enter your plea of true or not true.
What is your plea, sir?
THE DEFENDANT: True, Your Honor.
THE COURT: Do you understand, Mr. Flores, if you plead true, I will instruct the jury to find the Habitual Offender Notice true, which will require them to assess a

Page 3

sentence of not less than 25 years nor more than 99 years or life confinement in the Institutional Division of the Texas Department of Criminal Justice, which is our long way of saying the state penitentiary?
Do you understand that, sir?
THE DEFENDANT: Yes, sir.
THE COURT: Has anyone threatened you, coerced you, conned you, arm-twisted you, used any type of improper pressure or influence to try to make you plead true against your will?
THE DEFENDANT: No, Your Honor.
THE COURT: Are you pleading true of your own free will?
THE DEFENDANT: Yes, sir.
THE COURT: With no delusive hope of lenient treatment or pardon or parole or action by authorities based on this plea of true; is that correct, sir?
THE DEFENDANT: Yes, sir.
THE COURT: All right. Then I will accept your plea of true. And if you persist in entering your plea of true in the presence of the jury, I'm not going to give you the third degree or ask you any of these questions because I've already done so and I'm satisfied that you're competent and that it is your free and

Page 4

voluntary decision, and you'll simply be asked what is your plea, true or not true, and you enter a plea of true, and that will be the end of it.
Anything else from either side before we bring in the jury and proceed?
MR. ALPERT: No, Your Honor, not from the State.
MR. ST. JOHN: No, sir.
THE COURT: Also been advised there are certain exhibits that have been marked, have been redacted, had certain information removed and that address the Habitual Offender Notice and other issues that are going to be admitted without objection, and fingerprints based on the Defendant's plea of true and the Defense strategy; is that correct, Counsel?
MR. ST. JOHN: Yes, Judge.
THE COURT: All right. Is State prepared to go forward with those exhibits at this time?
MS. JACK: State is, Your Honor.
THE COURT: All right. Then bring in the jury.
(Open court, Defendant and jury present)
THE COURT: Ms. Jack, come forward.
Thank you, Counsel, Mr. Flores, for standing.

Page 5

At this time I will order the prosecutor to read the remainder of the indictment.
(Habitual Offender Notice of the indictment read)
THE COURT: All right. Jerry Lee Flores, to the allegations in the Habitual Offender Notice of your indictment alleging prior convictions in 1993 and 1990, you may enter your plea of true or not true.
What is your plea, sir?
THE DEFENDANT: True, Your Honor.
THE COURT: Thank you. Y'all may be seated.
Let the record reflect the Defendant entered a plea of true to the Habitual Offender Notice in open court in the presence of the jury.
Members of the jury, there are no opening statements before the sentencing phase of a criminal trial.
State may proceed.
MS. JACK: Your Honor, at this time the State would offer State's Exhibit No. 1 into evidence for all purposes and State's Exhibit 1-A into evidence for the record only.
MR. ST. JOHN: No objection to State's 1 and 1-A for the record only.

Offender: Jerry Flores
OK DOC#: 170639
Status: INACTIVE

Photos

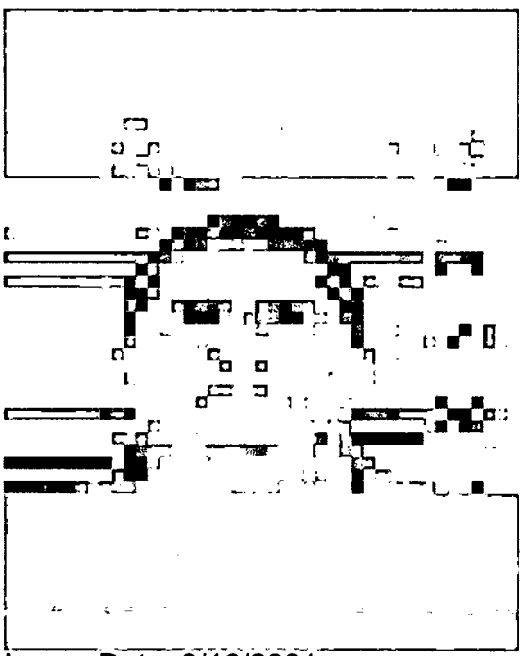

Image Date: 9/16/2001
12

Appearance & Identifiers

Gender: Male
Race: American Indian
Height: 5 ft 7 in
Weight: 200 lbs
Hair Color: Brown
Eye Color: Brown

OK DOC#: 170639
Birth Date: 9/30/1956

Current Facility: OUTSIDE
Reception Date: 3/11/1993

Sentences

	CRF#	Court	Offense	Conviction Date	Term	Term Code	Reception Date	Discharged Date
(1)	1998-253	ADAIR COUNTY COURT	POSS OF CONTROLLED SUBSTANCE		5 Y	P&PSUS	2/22/1999	5/4/2001
(2)	1997-252	CHEROKEE COUNTY COURT	POSS OF CONTROLLED SUBSTANCE		5 Y	P&PSUS	1/5/1999	5/4/2001
(3)	90-65	CHEROKEE COUNTY COURT	DUI - LIQUOR OR DRUGS/APCV	2/23/1993	5 Y	Incarceration	3/11/1993	7/27/1996
(4)	93-13	CHEROKEE COUNTY COURT	DUI - LIQUOR OR DRUGS/APCV	2/23/1993	5 Y	Incarceration	3/11/1993	7/27/1996
	93-13	CHEROKEE COUNTY COURT	UNKNOWN - FOR WARRANTS ONLY	2/23/1993	1 Y	Incarceratien	3/11/1993	8/16/1993
	93-13	CHEROKEE COUNTY COURT	UNKNOWN - FOR WARRANTS ONLY	2/23/1993	1 Y	Incarceration	3/11/1993	8/16/1993
	93-13	CHEROKEE COUNTY COURT	DRIVING W/LICENSE CANC/SUSP/REVOKED	2/23/1993	1 Y	Incarceration	3/11/1993	8/16/1993
	90-65	CHEROKEE COUNTY COURT	DRIVING W/LICENSE CANC/SUSP/REVOKED	2/23/1993	1 Y	Incarceration	3/11/1993	8/16/1993

89-187	CHEROKEE COUNTY COURT	POSS OF CONTROLLED SUBSTANCE	2/15/1990	2 Y	Probation	3/16/1990	8/20/1991
88-46	CHEROKEE COUNTY COURT	DUI - LIQUOR OR DRUGS/APCV	4/6/1988	1 Y	Probation	4/6/1988	4/5/1990
88-46	CHEROKEE COUNTY COURT	DUI - LIQUOR OR DRUGS/APCV	4/6/1988	1 Y	Incarceration	8/22/1988	8/21/1989

DWT
95-T-1220
95-T-1566

APPENDIX E

1. TRIAL COURT'S FINDINGS OF FACT & CONCLUSIONS OF LAW ON APPLICATION FOR SUBSEQUENT WRIT OF HABEAS CORPUS with (attendtion) to note 1. 1 Of 1

2. Letter in answering Flores about his Records being SEALED.
3. DOCUMENT OF SEALED VOLUME TWO & Three on Aug.16,2002.

NO. C-372-W012364-0849816-C

EX PARTE	§	IN THE 372ND DISTRICT COURT
	§	
	§	OF
	§	
JERRY LEE FLORES	§	TARRANT COUNTY, TEXAS

COURT'S FINDINGS OF FACTS & CONCLUSIONS OF LAW ON APPLICATION FOR SUBSEQUENT WRIT OF HABEAS CORPUS

The Court has before it an application or request for relief pursuant to a writ of habeas corpus filed under Article 11.07 of the Texas Code of Criminal Procedure. The Applicant alleges his confinement is illegal for three reasons: (1) the sentence is illegal, (2) he was subjected to an illegal search and seizure, and (3) his trial counsel was ineffective. *See* Application. The Court adopts the State's proposed Findings of Fact and Conclusions of Law as filed on November 22, 2023. *See* Attachment A.

Applicant's present application is **DISMISSED**[1].

SIGNED AND ENTERED on this the ___8th____ day of December 2023.

Erin W. Cofer
Criminal Law Magistrate
Tarrant County, Texas

[1] *Ex parte McMillan* is currently pending before the Texas Court of Criminal Appeals. No. WR-88,970-01, 2020 WL 729772 at 1 (Tex. Crim. App. Feb 12, 2020). The Court's decision in *McMillan* could impact whether relief is granted on Applicant's first ground. If the Court in *Ex parte McMillan* decides that *Ex parte Pue* is retroactive, Applicant's sentence will be considered improperly enhanced and his first ground should be granted. *See Ex parte McMillan*, No. WR-88,970-01. At the time of this order, no opinion has been issued in *McMillan*.

Ex Parte McMillan, 2024 Tex. Crim App. LEXIS 354

conclusion: We hold the Rue rule. that Texas law determines the finality of a foreign conviction for enhancement purposes in Texas, applies retroactively. We find Applicants federal conviction to be final applying Texas law. We deny relief,

Ex parte McMillan, 2024 Tex Crim. App. LEXIS 354 Delivered: MAY 1, 2024

Exhibit 

MELANIE H. TELL
Legal Assistant

J. WARREN ST. JOHN
ATTORNEY AND COUNSELOR AT LAW
2020 BURNETT PLAZA
801 CHERRY STREET UNIT NO. 5
FORT WORTH, TEXAS 76102-6883
(817) 336-1436
FAX (817) 336-1429
E-Mail: jwlawyer@aol.com

KIMBERLY T. ST. JOHN
Office Manager

February 5, 2007

Mr. Jerry Flores
TDC# 1119828
Telford Unit
P.O. Box 9200
New Boston, Texas 75570

Re: State of Texas v. Flores

Dear Mr. Flores:

I am in receipt of your letter dated January 31, 2007.

I had access to all of the record and I do not recall any part of it being sealed.

All of the relevant issues were addressed for the brief from the entire record.

I wish you the best.

Sincerely,

J. Warren St. John

JWS:mht

NO. 0849816D

THE STATE OF TEXAS	}(	IN THE 372ND JUDICIAL
VS.	}(	DISTRICT COURT
Jerry Lee Flores	}(	TARRANT COUNTY, TEXAS

SEALED VOLUME

VOLUME 2 of 3
(Jury Voir Dire)

Sealed by Order of Judge Scott Wisch on the 16th day of August, 2002
(pursuant to Article 35.29 CCP)