

APPENDIX

Vol. 1- Court Orders and Opinions

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COURT OF APPEALS (COA) ORDERS

United States Court of Appeals
for the Fifth Circuit

No. 25-50539

United States Court of Appeals
Fifth Circuit

FILED

December 26, 2025

Lyle W. Cayce
Clerk

BRYAN LAMAR GRESHAM,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,*
Correctional Institutions Division,

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 5:25-CV-19

ORDER:

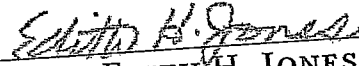
Bryan Lamar Gresham, Texas prisoner # 02197084, pleaded no contest to aggravated assault with a deadly weapon, and he is serving a 14-year sentence. He now seeks a certificate of appealability (COA) to appeal the district court's dismissal as untimely of his 28 U.S.C. § 2254 application challenging this conviction. Gresham asserts that the one-year limitations period should begin on the dates he discovered the factual predicates of his claims pursuant to 28 U.S.C. § 2244(d)(1)(D), that the district court erred in concluding that he did not act diligently in presenting his claims, and that he

No. 25-50539

is entitled to review of his constitutional claims because he established his actual innocence. In addition, he argues the merits of his constitutional claims, which involve claims of an involuntary plea based on ineffective assistance of counsel and violations of *Brady v. Maryland*, 373 U.S. 83 (1963).

To obtain a COA to appeal the dismissal of a § 2254 application, Gresham must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Because the district court dismissed Gresham's application on procedural grounds without reaching the merits of his claims, he must show, "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

Gresham has not made the requisite showing. Accordingly, his motion for a COA is DENIED.


JUDGE EDITH H. JONES
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 23, 2026

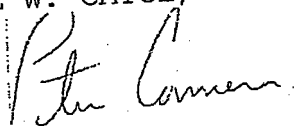
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-50539 Gresham v. Guerrero
USDC No. 5:25-CV-19

~~The court has taken the following action in this case: Appellant's~~
motion for an extension of time to file reconsideration is DENIED.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Peter A. Conners, Deputy Clerk
504-310-7685

Mr. Bryan Lamar Gresham
Ms. Justine Isabelle Caedo Tan

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 26, 2026

#02197084
Mr. Bryan Lamar Gresham
CID Garza East Transfer Facility
4304 Highway 202
Beeville, TX 78102-0000

No. 25-50539 Gresham v. Guerrero
USDC No. 5:25-CV-19

Dear Mr. Gresham,

We will take no action on your motion for reconsideration because it is untimely. The time for filing a motion for reconsideration under 5th Cir. R. 27 has expired.

Your motion to extend time to file a motion for reconsideration/rehearing was denied.

Sincerely,

LYLE W. CAYCE, Clerk

Renee McDonough

By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

CC: Ms. Justine Isabelle Caedo Tan

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE,
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January 23, 2026

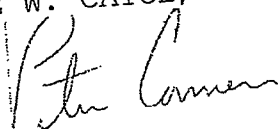
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-50539 Gresham v. Guerrero
USDC No. 5:25-CV-19

~~The court has taken the following action in this case: Appellant's~~
motion for an extension of time to file reconsideration is DENIED.

Sincerely,

LYLE W. CAYCE, Clerk



By: Peter A. Conners, Deputy Clerk
504-310-7685

Mr. Bryan Lamar Gresham
Ms. Justine Isabelle Caedo Tan

DISTRICT COURT'S ORDER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BRYAN LAMAR GRESHAM,
TDCJ No. 02197084,

Petitioner,

v.

ERIC GUERRERO, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

CIVIL NO. SA-25-CA-0019-JKP

MEMORANDUM OPINION AND ORDER

Before the Court are *pro se* Petitioner Bryan Lamar Gresham's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) and Supplemental Brief in Support (ECF No. 2), Respondent Eric Guerrero's Answer (ECF No. 18), and Petitioner's Reply (ECF No. 21) thereto. Petitioner challenges the constitutionality of his 2018 state court conviction for aggravated assault with a deadly weapon, arguing, among other things, that he is actually innocent of the charged offense and that his counsel was ineffective. In response, Respondent contends Petitioner's federal habeas petition should be dismissed with prejudice as untimely.

Having carefully considered the record and pleadings submitted by both parties, the Court agrees with Respondent that Petitioner's allegations are barred from federal habeas review by the one-year statute of limitations embodied in 28 U.S.C. § 2244(d)(1). Thus, for the reasons discussed below, the Court concludes Petitioner is not entitled to federal habeas corpus relief or a certificate of appealability.

I. Background

In May 2018, Petitioner pled no contest in Bexar County to one count of aggravated assault with a deadly weapon and was sentenced to fourteen years of imprisonment. *State v. Gresham*, No. 2016CR11156 (175th Dist. Ct., Bexar Cnty., Tex. May 4, 2018).¹ Pursuant to the plea bargain agreement, Petitioner judicially confessed to committing the offense and waived his right to appeal.² As a result, Petitioner did not appeal his conviction and sentence.

Instead, Petitioner challenged the constitutionality of the conviction by filing an application for state habeas corpus relief on November 16, 2018, at the earliest.³ *Ex parte Gresham*, No. 89,623-01 (Tex. Crim. App.).⁴ The Texas Court of Criminal Appeals denied this application without written order on April 24, 2019.⁵ Petitioner later filed a second state habeas application challenging his aggravated assault conviction on June 12, 2023, which the Texas Court of Criminal Appeals also denied without written order on October 9, 2024. *Ex parte Gresham*, No. 89,623-03 (Tex. Crim. App.).⁶

Thereafter, Petitioner placed the instant federal habeas petition in the prison mail system on December 21, 2024.⁷ In the § 2254 petition and supplemental brief in support, Petitioner argues: (1) he is actually innocent of the charged offense to which he pled no contest, (2) he

¹ ECF No. 19-2 at 1-10 (Plea Agreement), 18-19 (Judgment).

² *Id.* at 5.

³ Because of Petitioner's *pro se* status, the prison mailbox rule applies to his state habeas application. *Richards v. Thaler*, 710 F.3d 573, 579 (5th Cir. 2013) (extending mailbox rule to state habeas application delivered to prison authorities for mailing).

⁴ ECF No. 19-1 at 4-20 (Application).

⁵ ECF No. 19-3 (Notice).

⁶ ECF Nos. 19-10 at 5-23 (Application); 19-12 (Notice).

⁷ ECF No. 1 at 15.

received ineffective assistance from his trial counsel, (3) the State failed to disclose material exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and (4) his plea was involuntary because he was not sufficiently aware of certain circumstances regarding his case.

II. Analysis

Respondent contends the allegations raised in Petitioner's federal habeas petition are barred by the one-year limitation period of 28 U.S.C. § 2244(d). Section 2244(d) provides, in relevant part, that:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.

In this case, Petitioner's conviction became final on Monday, June 4, 2018, when the time for appealing the judgment and sentence expired. See Tex. R. App. P. 26.2 (providing a notice of appeal must be filed within thirty days following the imposition of a sentence).⁸ As a result, the limitations period under § 2244(d) for filing a federal habeas petition challenging his underlying conviction expired a year later on June 4, 2019. Because Petitioner did not file his § 2254 petition until December 21, 2024—over five-and-a-half years after the limitations period expired—his petition is barred by the one-year statute of limitations unless it is subject to statutory or equitable tolling.

⁸ Because the thirty-day window to file an appeal expired on a Sunday, the limitations period did not begin until the following Monday. See *Flanagan v. Johnson*, 154 F.3d 196, 202 (5th Cir. 1998) (finding Rule 6(a) of the Federal Rules of Civil Procedure applies to computation of AEDPA's limitations period).

A. Statutory Tolling

1. § 2244(d)(1)

Petitioner argues that he is entitled to statutory tolling under 28 U.S.C. § 2244(d)(1). Under § 2244(d)(1), the limitations period may begin on a date other than the date the judgment became final if one of the following is shown: (1) an impediment created by State action that violated the Constitution or federal law which prevented Petitioner from filing a timely petition. (2) a newly recognized constitutional right upon which the petition is based. or (3) the factual predicate of a claim or claims could not have been discovered earlier through the exercise of due diligence. 28 U.S.C. § 2244(d)(1)(B)-(D). Petitioner does not satisfy any of these provisions.

Petitioner argues that he could not have discovered the factual predicate of his ineffective-assistance allegations (Claim 2) and *Brady* allegations (Claim 3) until after the record was developed during his second state habeas corpus proceeding. According to Petitioner, the State withheld a report generated by the San Antonio Police Department that analyzed sexual assaults and robberies occurring in hotels and motels in the area from the past two years which offered a "vast pool of alternative suspects."⁹ The report, entitled "Strategic Intelligence and Analysis Serial Rapes Update" (SIA Report), was released in February 2016 but allegedly not made available to Petitioner until January 2024. Petitioner also contends that his trial attorney, Robert Barrera, withheld knowledge pertaining to the SIA Report and an alternative suspect that was found through DNA testing. For these reasons, Petitioner argues that he could not have discovered the factual predicate of his claims until May 21, 2024, the date counsel testified at the state habeas evidentiary hearing.¹⁰

⁹ ECF Nos. 1 at 13; 2 at 8, 17; 21 at 4.

¹⁰ ECF Nos. 2 at 4-5; 21 at 6.

Petitioner's assertions that the factual predicate of his claims could not have been discovered until January or May 2024 are a bit perplexing given that Petitioner raised each of the underlying allegations in his second state habeas application that was filed in June 2023. Nevertheless, the record contradicts Petitioner's assertions and indicates that Mr. Barrera discussed both the SIA Report and the potential alternative suspect with Petitioner prior to his pleading guilty in May 2018. In an affidavit submitted to the state habeas court, Mr. Barrera explained his discussion of the SIA Report with Petitioner:

My representations and disclosures to [Petitioner] included all the evidence in the primary case as well as the cases which were taken into consideration. As a specific document, I do not recall the actual document he identified as "SIA Serial Rape Updates." If it was contained in the discovery file however, I would have discussed it with him. The record shows that it was disclosed. The pattern reflected therein is similar to the allegations against [Petitioner] so I would have certainly discussed that issue with him in light of the pending cases. I do know that this document, as well as the totality of the evidence in the primary case and the pending cases, all supported a similar if not identical "MO" of the allegations made in the primary case as to [Petitioner] allegedly representing himself as a peace officer who would, in exchange for sexual favors, not arrest the "victim." The 2016CR11755 case with Heidi Merkel and the 2018CR4391 case with Samantha Schmidt were similar enough that I believed that they both might have been admissible under 404b as evidence of plan or identity. There were notes and I believe a recording that [Petitioner] even admitted to the officer that he had previously been falsely accused of the same "MO" by another woman in another case, several years earlier.

(ECF No. 19-11 at 3). Counsel also noted that he discussed a potential "alternative suspect" with

Petitioner:

I would state that I was aware of the "Alternative Suspect" as referenced by [Petitioner] as a basis of his claim of lack of a "knowing" plea. The evidence clearly supports that I acknowledged physical receipt of same on the day the plea was actually entered. My recollection of the case however is that the prosecutor had told me of the existence of those records prior to the date of delivery on the 4th of May, 2018. My recollection is that they were delivered as we sat in court in preparation for trial or plea negotiations. I discussed that issue with [Petitioner] in the presence of Robert Arellano, co-counsel for [Petitioner]. Mr. Arellano was present for all conversations related to plea agreements in this case. [Petitioner] was fully aware of the CODIS hit on Tyrone Baker at the time of his plea. In regard to the communications in Ms. Durham's email of March 16th, 2023, I did

not have immediate access to the records so my representation of "no immediate recollection of the dates" refers to the actual date of disclosure of the CODIS hit on Banks. I explained to [Petitioner] that the evidence clearly showed that the Complainant in this case had been using the motel room for numerous "dates" with numerous persons. There were multiple empty condom wrappers and two (2) actual condoms found in the room. Additionally, there was an open and empty "Trojan Bareskin" condom box found in the trashcan further evidencing the potential for numerous persons to have been in that room with the Complainant. [Petitioner] acknowledges that he knew that he was "excluded" by the DNA actually identified. What we discussed is that despite there being a match to another person, Tyrone Banks, that evidence did not exclude [Petitioner] as the perpetrator of this offense and only confirmed that Banks had been one of the Complainant's "dates." Nor did the CODIS hit surmount the positive photo identification of [Petitioner] made by the Complainant as the assault perpetrator. In addition to this positive photo identification, [Petitioner] made admissions placing him at the scene, his cell phone texts contained communications with the Complainant and his GPS coordinates placed him in the area. The Complainant's description of the events surrounding her assault were similar to the other assault cases then pending. These other complainants and cases were totally unrelated but the MO was very similar. We discussed the possibility that under Tx. Rule of Evid. 404b, the other pending cases would likely be admitted against him in trial to show "plan and identity."

Id. at 1-2.

Counsel reiterated the above statements at the state habeas evidentiary hearing held in May 2024.¹¹ The state habeas trial court found trial counsel's affidavit and testimony to be truthful and credible and concluded that Petitioner failed to prove that information had been improperly withheld from him.¹² These findings and conclusions were adopted by the Texas Court of Criminal Appeals when it ultimately denied Petitioner's state habeas application.¹³

The above determinations by the state court, including the trial court's credibility findings, are entitled to a presumption of correctness unless they lack fair support in the record. *Demosthenes v. Baal*, 495 U.S. 731, 735 (1990); *Miller v. Thaler*, 714 F.3d 897, 903 (5th Cir.

¹¹ ECF No. 19-11 at 16-22, 32-37 (reaffirming that counsel discussed both the SIA Report and the potential alternative suspect, Tyrone Baker, with Petitioner prior to his plea agreement).

¹² *Id.* at 164

¹³ ECF No. 19-12.

2013). The Court finds no support in the record for Petitioner's contention that material facts or evidence were withheld from him by either his counsel or the State. He therefore has not shown the existence of a state-created impediment that prevented the timely filing of the instant federal petition or that he could not have discovered the factual predicate of his claims at an earlier date through the exercise of due diligence. For these reasons, the Court finds § 2244(d)(1)(B)-(D) inapplicable.¹⁴

2. § 2244(d)(2)

Petitioner is, however, entitled to statutory tolling under 28 U.S.C. § 2244(d)(2). Section 2244(d)(2) provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." As discussed previously, Petitioner challenged the constitutionality of his state court conviction and sentence by filing his first state habeas application on November 16, 2018, which was eventually denied by the Texas Court of Criminal Appeals on April 24, 2019. Accordingly, Petitioner's first state habeas application tolled the limitations period for a total of 160 days, making his federal petition due November 11, 2019.

Although Petitioner is entitled to statutory tolling under § 2244(d)(2) for his first state habeas application, the second application he later filed challenging the underlying aggravated assault conviction does not afford him the same courtesy. This second state habeas application was not filed until June 12, 2023, well after the time for filing a federal petition under § 2244(d)(1) had already lapsed. As a result, the second application does not toll the one-year

¹⁴ Petitioner does not argue that the petition is based on a newly recognized constitutional right. 28 U.S.C. § 2244(d)(1)(C).

limitations period for any of Petitioner's claims. See 28 U.S.C. § 2244(d)(2); *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000).

Petitioner's limitations period for filing a federal petition challenging his conviction and sentence therefore still expired November 11, 2019. Again, Petitioner did not file the instant § 2254 petition until December 21, 2024, well after the limitations period expired under either § 2244(d)(1)(A).

B. Equitable Tolling

In some cases, the limitations period may be subject to equitable tolling. The Supreme Court has made clear that a federal habeas corpus petitioner may avail himself of the doctrine of equitable tolling "only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *McQuiggin v. Perkins*, 569 U.S. 383, 391 (2013); *Holland v. Florida*, 560 U.S. 631, 649 (2010). Equitable tolling is only available in cases presenting "rare and exceptional circumstances," *United States v. Riggs*, 314 F.3d 796, 799 (5th Cir. 2002), and is "not intended for those who sleep on their rights." *Manning v. Epps*, 688 F.3d 177, 183 (5th Cir. 2012).

Petitioner does not argue that he is entitled to equitable tolling in either his § 2254 petition, supplement brief in support, or reply brief. Even with the benefit of liberal construction, Petitioner has provided no justification to this Court for the application of equitable tolling, and a petitioner's ignorance of the law, lack of legal training or representation, and unfamiliarity with the legal process do not rise to the level of a rare or exceptional circumstance which would warrant equitable tolling of the limitations period. *U.S. v. Petty*, 530 F.3d 361, 365-66 (5th Cir. 2008); see also *Sutton v. Cain*, 722 F.3d 312, 316-17 (5th Cir. 2013) (a garden variety claim of excusable neglect does not warrant equitable tolling).

Moreover, Petitioner fails to demonstrate that he has been pursuing his rights diligently. Petitioner waited over four years after the denial of his first state habeas application before filing his second state habeas application raising the claims contained in the instant § 2254 petition. This delay alone weighs against a finding of diligence. *See Stroman v. Thaler*, 603 F.3d 299, 302 (5th Cir. 2010) (affirming the denial of equitable tolling where the petitioner had waited seven months to file his state application). Further, Petitioner fails to provide any legitimate reason why he waited over two months after the Texas Court of Criminal Appeals denied his second state habeas application in October 2024 before filing the instant federal petition.

Consequently, because Petitioner fails to assert any specific facts showing that he was prevented, despite the exercise of due diligence on his part, from timely filing his federal habeas corpus petition in this Court, his petition is untimely and barred by § 2244(d)(1).

C. Actual Innocence

Finally, Petitioner argues that his untimeliness should be excused because of the actual-innocence exception.¹⁵ In *McQuiggin*, 569 U.S. at 386, the Supreme Court held that a prisoner filing a first-time federal habeas petition could overcome the one-year statute of limitations in § 2244(d)(1) upon a showing of “actual innocence” under the standard in *Schlup v. Delo*, 513 U.S. 298, 329 (1995). But “tenable actual-innocence gateway pleas are rare,” and, under *Schlup*’s demanding standard, the gateway should open only when a petitioner presents new “evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.” *McQuiggin*, 569 U.S. at 386, 401 (quoting *Schlup*, 513 U.S. at 316). In other words, a petitioner is required to produce “new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence”—sufficient to persuade the

¹⁵ ECF Nos. 1 at 5, 13; 2 at 9-14; 21 at 7-9.

district court that “no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.” *Schlup*, 513 U.S. at 324.

Petitioner does not meet this demanding standard. As evidence of his innocence, Petitioner cites the fact that he was excluded as a contributor of DNA found at the scene of the crime and that another individual, Tyrone Baker, was found to be a match.¹⁶ However, such an argument does not constitute “new reliable evidence” that was unavailable at the time of his guilty plea. Indeed, as mentioned previously, counsel discussed the DNA evidence and potential “alternative suspect” with Petitioner prior to his guilty plea. Nor does such evidence establish Petitioner’s innocence of the underlying offense of aggravated assault. As discussed by Petitioner’s trial counsel during his state habeas proceedings, the DNA evidence does not exclude Petitioner as the person who assaulted the victim with a deadly weapon. Rather, it only confirmed that Baker was one of numerous “dates” the victim had in the hotel room that day. The DNA evidence also did not surmount other evidence pointing to Petitioner as the perpetrator, including the victim’s positive photo identification, Petitioner’s admissions and GPS coordinates placing him at the scene, and cell phone texts containing communications with the victim.

Petitioner also argues that the following circumstances support his claim of innocence: (1) the victim’s photo identification was unreliable, (2) the SIA Report established a “vast pool” of alternative suspects, including gang members, and (3) the victim’s friend contradicted the victim’s account.¹⁷ But such conclusory assertions, without any evidentiary support, do not constitute “new reliable evidence” establishing Petitioner’s innocence. See *Ford v. Davis*, 910 F.3d 232, 235 (5th Cir. 2018) (“[A]bsent evidence in the record,” a court cannot “consider a

¹⁶ ECF No. 2 at 9-14

¹⁷ ECF Nos. 2 at 9-14; 21 at 7.

habeas petitioner's bald assertions on a critical issue in his *pro se* petition . . . , unsupported and unsupportable by anything else contained in the record, to be of probative evidentiary value.") (citation omitted); *Koch v. Puckett*, 907 F.2d 524, 530 (5th Cir. 1990) (holding "mere conclusory allegations do not raise a constitutional issue in a habeas proceeding"). Even if they were supported by the record, such allegations do little, if anything, to establish Petitioner's innocence of the crime, much less constitute the strong evidence necessary under *Schlup*'s demanding standard.

In sum, Petitioner has not produced any "new reliable evidence" demonstrating his factual innocence of aggravated assault or that his plea of guilty to the charge was involuntary. Petitioner's arguments, which were already rejected by the state court during Petitioner's state habeas proceedings, do not undermine confidence in the outcome of his trial. Consequently, the untimeliness of Petitioner's federal habeas petition will not be excused under the actual-innocence exception established in *McQuiggin*.¹⁸

III. Certificate of Appealability

The Court must now determine whether to issue a certificate of appealability (COA). See Rule 11(a) of the Rules Governing § 2254 Proceedings; *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003) (citing 28 U.S.C. § 2253(c)(1)). A COA may issue only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Supreme Court has explained that the showing required under § 2253(c)(2) is straightforward when a district court has rejected a petitioner's constitutional claims on the merits. The

¹⁸ To the extent Petitioner also raises a "freestanding" claim of actual innocence under *Herrera v. Collins*, 506 U.S. 390, 417 (1993), this claim still would not provide a cognizable basis for federal habeas relief. *Dowthitt v. Johnson*, 230 F.3d 733, 741 (5th Cir. 2000) (citing *Herrera*, 506 U.S. at 400). The Fifth Circuit does not recognize freestanding claims of actual innocence on federal habeas review. *In re Swearingen*, 556 F.3d 344, 348 (5th Cir. 2009); see also *Graves v. Cockrell*, 351 F.3d 143, 151 (5th Cir. 2003) (collecting cases).

petitioner must demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). This requires a petitioner to show "that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El*, 537 U.S. at 336 (citation omitted).

The issue becomes somewhat more complicated when the district court denies relief on procedural grounds. *Id.* In that case, the petitioner seeking COA must show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack*, 529 U.S. at 484).

A district court may deny a COA *sua sponte* without requiring further briefing or argument. See *Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). The one-year statute of limitations found in the AEDPA has been in place since 1996, yet Petitioner missed the filing deadline by over five years and provided no valid justification for the application of tolling. For these reasons, the Court concludes that jurists of reason would not debate whether Petitioner was entitled to federal habeas relief, and a COA will not issue.

IV. Conclusion

After careful consideration, the Court concludes that Petitioner's § 2254 petition (ECF No. 1) is barred from federal habeas corpus relief by the statute of limitations set forth in 28 U.S.C. § 2244(d). As a result, Petitioner is not entitled to federal habeas corpus relief.

Accordingly, **IT IS HEREBY ORDERED** that:

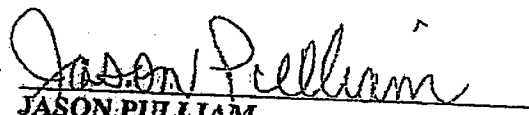
1. Federal habeas corpus relief is **DENIED**, and Petitioner Bryan Lamar Gresham's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITH PREJUDICE** as untimely;

2. No Certificate of Appealability shall issue in this case; and

3. All remaining motions, if any, are **DENIED**, and this case is now **CLOSED**.

It is so **ORDERED**.

SIGNED this the 3rd day of June, 2025.


JASON PULLIAM
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BRYAN LAMAR GRESHAM,
TDCJ No. 02197084,

Petitioner,

v.

ERIC GUERRERO, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division.

Respondent.

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CIVIL NO. SA-25-CA-0019-JKP

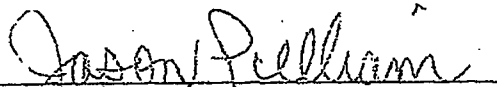
J U D G M E N T

The Court has considered the Judgment to be entered in the above-styled and numbered cause.

Pursuant to this Court's Memorandum Opinion and Order of even date herewith, IT IS **HEREBY ORDERED, ADJUDGED and DECREED** that federal habeas corpus relief is **DENIED** and that Petitioner Bryan Lamar Gresham's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITH PREJUDICE**. All pending motions, if any, are **DENIED**, and no Certificate of Appealability shall issue in this case. This case is now **CLOSED**.

It is so **ORDERED**.

SIGNED this the 3rd day of June, 2025.


JASON PULLIAM
UNITED STATES DISTRICT JUDGE



NO. 2016-CR-11156-W1

EX PARTE

§

IN THE DISTRICT COURT

§

175TH JUDICIAL DISTRICT

BRYAN LAMAR GRESHAM

§

BEXAR COUNTY, TEXAS

ORDER

Applicant, **Bryan Lamar Gresham** has filed a *pro se* application for post-conviction writ of habeas corpus pursuant Article 11.07 of the Texas Code of Criminal Procedure, collaterally attacking his conviction in cause number **2016CR11156**.

HISTORY OF THE CASE

On or about May 04, 2018, Applicant pled *nolo contendere*/no contest to the offense of **aggravated assault with a deadly weapon**. Applicant was sentenced to **14 (fourteen)** years in the Texas Department of Criminal Justice -Institutional Division. Applicant filed this first writ application on December 10, 2018. A copy of this application was received by the District Attorney's office on December 18, 2018.

ALLEGATIONS OF APPLICANT

1. In Ground One for relief, Applicant alleges the revelation of new evidence. Specifically, Applicant states that a recording not available at the time of Applicant's plea agreement refutes the state's theory of the case.
2. In Ground Two for relief, Applicant alleges that the State and San Antonio Police Department (SAPD) withheld evidence favorable to Applicant. Specifically, Applicant contends SAPD and the State conspired in withholding a video of the offense taken on Applicant's mobile phone. Further, Applicant states his mobile phone was confiscated and was not made available to Applicant's attorney. Applicant states that had this

information been made available, Applicant would not have entered into a plea agreement.

FINDINGS OF FACT

1. On January 19, 2019 this court received a memorandum from Applicant expanding on both grounds for relief. Applicant further provides a copy of the following documents:
 - A. Motion For Discovery And Production of Records
 - B. Bexar County Criminal Investigation Laboratory Forensic DNA Report
 - C. Motion for Discovery and Inspection Pursuant To Art. 39.14 TX. CODE CRIM PROC and Michael Morton Act
 - D. Motion For Speedy Trial
2. This court finds Applicant failed to produce the contents of the video recording which Applicant claims would exonerate him.
3. In regards to Ground Two, this court finds that on May 4, 2018, Applicant signed an order titled "Court's Admonishment and Defendant's Waivers and Affidavit of Admonishments." The order states the following:
 - a. "I, the Defendant, hereby enter a plea of *nolo contendere* to this charge."
 - b. "I am mentally competent now and was legally sane at the time that this offense was committed."
 - c. "I have not been threatened, coerced, or placed in fear by any person to induce me to enter my plea."
 - d. "If I have a plea bargain agreement with the prosecutor, its terms are fully set forth in the attached document. I have received no promise from the prosecutor,

my attorney or the Court which are not set forth in that document, and I realize that no one else would be empowered to make me any promises."

CONCLUSIONS OF LAW

1. In collaterally attacking a conviction through habeas corpus, an applicant has the burden to allege and prove *facts* which, if true, entitle him to relief. *Ex parte Russell*, 720 S.W.2d 477, 487 (Tex.Crim.App.1986); *Ex parte Maldonado*, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985). This court finds that Applicant fails to meet his burden of proof by failing to specify the contents of the alleged video recording.
2. A *Brady* claim is cognizable on habeas. See *Ex parte Kimes*, 872 S.W.2d 700, 701 (Tex. Crim. App. 1993) (citing *Ex parte Adams*, 768 S.W.2d 281, 288 (Tex. Crim. App. 1989); see also *Brady v. Maryland*, 373 U.S. 83 (1963). When challenging the State's failure to disclose exculpatory evidence on habeas, an applicant must show the following: (1) "that the State failed to disclose evidence, regardless of the prosecution's good or bad faith"; (2) "that the withheld evidence is favorable to applicant"; and (3) "that the evidence is material, that is, there is a reasonable probability that had the evidence been disclosed, the outcome of the trial would have been different." *Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002). Applicant fails to meet his burden to show that had the recording been admitted into evidence, the outcome of the proceeding would have been different.
3. An applicant cannot show constitutional "materiality" by simply alleging that a piece of undisclosed evidence "might have helped the defense[.]" *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002) (quoting *United States v. Agurs*, 427 U.S. 97, 109-10 (1976)). Evidence is not material if the applicant was able to present the evidence that

the applicant claims was suppressed at trial. *Marshall v. State*, 210 S.W.3d 618, 636 (Tex. Crim. App. 2006). The State is not required to disclose material exculpatory impeachment information and information supporting any affirmative defense before entering into a plea agreement with a defendant. *United States v. Ruiz*, 536 U.S. 622, 633 (2002). Thus, an applicant must submit evidence supporting his claim, *see, e.g., Ex parte Richardson*, 70 S.W.3d at 871, and present facts to show materiality. This court finds Applicant entered into a plea agreement in which the State need not disclose information supporting any affirmative defense to Applicant.

4. When there is an affirmative showing on the record that Applicant was admonished by the trial court, there is a presumption that Applicant entered his plea knowingly and voluntarily. Moreover, it is Applicant's burden to prove that his plea was entered without any understanding of its consequences. *Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App. 1985).
5. This court finds that Applicant was properly admonished by the court pursuant to the requirements of Article 26.13 (d) of the Texas Code of Criminal Procedure.
6. Based on the foregoing findings of fact and conclusions of law, it is hereby recommended that this application be **DENIED**.

NO. 2016-CR-11156-W1

ORDERS

The District Clerk of Bexar County, Texas, is hereby ordered to prepare a copy of this document, together with any attachments and forward the same to the following persons by mail or the most practical means:

- a. The Court of Criminal Appeals
Austin, Texas 78711
- b. Joe D. Gonzalez
Criminal District Attorney
Paul Elizondo Tower
Bexar County, Texas 78205
- c. Bryan Lamar Gresham
Garza West Unit
4250 Hwy 202
Beeville, TX, 78102

SIGNED, ORDERED and DECREED on July 28, 2019


JUDGE CATHERINE TORRES-STAH
175th Judicial District Court
Bexar County, Texas

TRIAL COURT'S FINDINGS OF FACT/OPINION
(WRIT 2)

EX PARTE

§

IN THE DISTRICT COURT

§

175TH JUDICIAL DISTRICT

BRYAN LAMAR GRESHAM

§

BEXAR COUNTY, TEXAS

TRIAL COURT FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant was indicted on December 5, 2016, for two counts of aggravated sexual assault, which are first degree offenses.
2. On or about May 04, 2018, Applicant pled no contest to one count of the lesser included offense of aggravated assault with a deadly weapon, a second degree felony. Applicant was sentenced to 14 years in the Texas Department of Criminal Justice -Institutional Division.
3. The terms of the plea bargain, entered into on May 4, 2018, were:
 - a. Prosecution to proceed only on Count I and for lesser included offense of aggravated assault with a deadly weapon.
 - b. Punishment to be assessed at 14 years.
 - c. Fine of \$1500.
 - d. Affirmative finding of a deadly weapon.
 - e. No application for community supervision.
 - f. Concurrent with Cause 2017CR8449 (DWI-3d).
 - g. Causes taken into consideration: 2018CR4391; 2016CR11755; and JN1820342.
4. On June 12, 2023, Applicant, Bryan Lamar Gresham filed, through his attorney Sarah Durham, an application for post-conviction writ of habeas corpus pursuant Article 11.07 of the Texas Code of Criminal Procedure, collaterally attacking his conviction in cause number 2016CR11156.

5. In Ground One Applicant claims that his plea was involuntary. He recites the following facts in support of Ground One:

On January 4, 2016, the Bexar County Criminal Investigation Laboratory ("CIL") received thirty-one pieces of evidence gathered from complainant, L.S.'s hotel in August 2015 during SAPD's investigation of the present case, 2016CR11156, SAPD Case# 15187142. See Appx. 035-037. Included in those items were two condoms, listed as "E9" and "E20F." That Serology Report was sent to Detective Reynaldo Montes of SAPD on February 11, 2016. On March 23, 2016, a DNA Report was sent to Detective Montes and read that "Human DNA consistent with an unknown male individual" was identified on the swab tip - condom interior of "E20F." See Appx. 038-039. On May 5, 2016, a supplemental DNA Report was sent to Detective Montes and concluded that Applicant was excluded as the source of the human DNA on that swab tip. See Appx. 040-041. On August 5, 2016, CIL mailed a letter to Detective Montes, alerting him and SAPD to a CODIS match resulting from the above testing. See Appx. 042. That letter stated that the DNA match indicated the human DNA from the fitted sheet ("E1") and the swab tip of the condom interior ("E20F") gathered from complainant's hotel room originated from the same individual. The letter also revealed that the match occurred between SAPD case #s 16004763 and 15187142. On March 27, 2017, Tyrone Baker was indicted for Sexual Assault allegedly committed on January 6, 2016 in Bexar County. See Appx. 043. Before his 2017 arrest, DNA collected from the complainant's bedroom in Baker's case was entered into CODIS on July 22, 2016; the SAPD number assigned to that case was #16004763. See Appx. 044-045. Tyrone Baker was arrested on April 25, 2017. See Appx. 046. However, Baker's case was dismissed on April 13, 2018 on account of a missing necessary and material witness. See Appx. 047. Baker was not, according to available SAPD and state's records, questioned in relation to the present case. It was not until June 2020, when Applicant received a copy of his file from Trial Counsel, that he learned of the CODIS hit between the two cases. He knew he was excluded as a DNA contributor to the scene but did not know that another specific individual was identified as a DNA contributor to his case. See Appx. 048-050. On August 30, 2015, Complainant ("L.S.") called 911 at 9:49 a.m. and reported that she'd been assaulted and raped. See Appx. 051-054. L.S. gave multiple statements to police, and vital details of her accounts changed with each telling. Finally, in February 2016, San Antonio Police Department issued a "Strategic Intelligence and Analysis" report. See Appx. 084-086. The report presents 81 hotel/motel sexual assaults and 162 robberies occurring in 2015 and early 2016. One of the cases specifically described in the report bore similar facts to those of the present case. See Appx. 084. The third page of the report is entitled, "Serial Rapists Utilizing Backpage.com." See Appx.

086. The report contained facts implicating other suspects in Applicant's case, but Applicant did not know about the report. Without knowing the above facts, Applicant pled guilty to Aggravated Assault with a Deadly Weapon on May 4, 2018. See Appx. 048-051.

6. In Ground Two Applicant claims that he is actually innocent of Aggravated Assault with a Deadly Weapon – the offense he pled *nolo contendere* to and was subsequently convicted.

Applicant alleges the following facts in support of Ground Two:

The existence of facts unknown to Applicant at the time of his nolo plea prove his innocence by a preponderance. The impediment to Applicant's knowledge of the facts cannot be attributed to his lack of due diligence but to the ineffective assistance of his trial counsel and synonymous Brady violation committed by the State. While Applicant was informed his DNA was not found at the scene, he was not told by his Trial Counsel that another male's DNA was gathered from the scene, and further, that male, Tyrone Baker was previously indicted in another Sexual Assault. In addition to Tyrone Baker as an alternative suspect, there was another long list of potential alternative suspects implicated in SAPD's serial rape and assaults investigation. The facts of the one case depicted in that report are incredibly similar to the facts in Applicant's case. The report also noted SAPD's investigation into the rapes and assault of people posting sex services on Backpage.com. Complainant was a sex worker with drug charges who posted her service on Backpage.com. That is where Applicant found her phone number. Complainant's account of her alleged assault changed with each telling; she refused a SANE exam and did not attempt to identify her assailant until 7 months after the alleged assault. Trial Counsel did not tell Applicant of the CODIS hit implicating Tyrone Baker in the assault, or at least proving beyond a reasonable doubt that he was in complainant's hotel room. Trial Counsel did not tell Applicant of the complainant's changing stories over the course of time. And the State, according to the discovery log associated with this case, did not provide SAPD's SIA report or any allusion to the ongoing investigation of similar cases. See Appx. 096-104. Applicant's involuntary guilty plea does not and cannot outweigh the existing exculpatory evidence above.

7. Applicant alleges that, despite his reasonable diligence, did not have a sufficient factual awareness of the circumstances surrounding his case at the time he pled guilty, rendering his plea involuntary. Applicant gives alleged details of DNA evidence—specifically, that he was excluded as a DNA contributor to the scene of this offense, and at the time of his plea he did

not know that another specific individual was identified as a DNA contributor to his case.

Applicant claims that because he did not know certain facts, his plea was involuntary.

8. Applicant claims he is actually innocent of aggravated assault with a deadly weapon. He claims that he was not told by his trial counsel that another male's DNA was gathered from the scene. He claims he did not know another alternative suspect existed.
9. Applicant had filed a previous writ application that was denied by the Court of Criminal Appeals on April 24, 2019 (WR-89,623-01). Applicant alleges that, although this is a second writ application, the asserted ground of involuntary plea is based upon facts unknown to Applicant at the time of his plea and not known to him until after filing his first writ, despite his exercise of reasonable diligence.
10. In Applicant's first writ application he alleged that newly discovered evidence--a video recording from Applicant's phone--refuted the State's theory of the case. Applicant stated that he was unable to access the video recording on his phone because it was in the State's custody. Applicant also alleged that the State and SAPD withheld evidence favorable to Gresham, specifically, the video recording on his phone that show a consensual sexual act between Gresham and an alleged victim in one of the cases that was taken into consideration. Applicant continues to make that argument within the context of his claim of involuntary plea.
11. As noted above, the Court of Criminal Appeals denied Applicant's first writ application on April 24, 2019. (WR-89-623-01).
12. As noted above, Applicant asserts that this subsequent writ is not barred by the subsequent writ provision because the asserted ground of involuntary plea is based upon facts unknown to Applicant at the time of his plea and unknown to Applicant at the time he filed his first

writ application.

13. The following items in the court's file are included with these findings:

- a. The writ application (2016CR11156-W2) and attachments;
- b. Applicant's Brief in Support of 11.07 Writ of Habeas Corpus Application filed on June 12, 2023;
- c. Transmittal letter of June 12, 2023, providing two thumb drives, both containing a video that is referenced in the writ application;
- d. The thumb drive of the video referenced in the writ application;
- e. Applicant's Memorandum in Support and Proposed Order Designating Issues filed on June 21, 2023;
- f. State's Response to Applicant's Petition for Writ of Habeas Corpus filed on June 20, 2023;
- g. Affidavit Request Order dated June 22, 2023;
- h. Applicant's Proposed Findings of Fact and Conclusions of Law on Applicant's 11.07 Habeas Corpus Application filed on September 8, 2023;
- i. Affidavit of Robert J. Barrera, Trial Counsel, dated January 24, 2024;
- j. Applicant's Factual Supplement to 11.07 Writ of Habeas Corpus Brief in Support;
- k. State's Notice of Retroactive Disclosures dated on or about June 20, 2023;
- l. State's Notice of Retroactive Disclosures dated January 25, 2024;
- m. Three-volume record from writ hearing on May 21, 2024.

14. In collaterally attacking a conviction through habeas corpus, an applicant has the burden to allege and prove facts which, if true, entitle him to relief. *Ex parte Russell*, 720 S.W.2d 477, 487 (Tex.Crim.App.1986); *Ex parte Maldonado*, 688 S.W.2d 114, 116 (Tex. Crim. App.

1985).

15. In connection with Ground Two Applicant claims that "the impediment to Applicant's knowledge of the facts cannot be attributed to his lack of due diligence but to the ineffective assistance of his trial counsel and synonymous *Brady* violation committed by the State." Moreover, although he did not specifically state under Ground One that the involuntariness of his plea was due to the ineffective assistance of counsel and alleged *Brady* violations, it seems to be implied from the arguments made by his habeas counsel.
16. A *Brady* claim is cognizable on habeas. See *Ex parte Kimes*, 872 S.W.2d 700, 701 (Tex. Crim. App. 1993) (citing *Ex parte Adams*, 768 S.W.2d 281, 288 (Tex. Crim. App. 1989); see also *Brady v. Maryland*, 373 U.S. 83 (1963). When challenging the State's failure to disclose exculpatory evidence on habeas, an applicant must show the following: (1) "that the State failed to disclose evidence, regardless of the prosecution's good or bad faith"; (2) "that the withheld evidence is favorable to applicant"; and (3) "that the evidence is material, that is, there is a reasonable probability that had the evidence been disclosed, the outcome of the trial would have been different." *Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002).
17. An applicant cannot show constitutional "materiality" by simply alleging that a piece of undisclosed evidence "might have helped the defense[.]" *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002) (quoting *United States v. Agurs*, 427 U.S. 97, 109-10 (1976)). Evidence is not material if the applicant was able to present the evidence that the applicant claims was suppressed at trial. *Marshall v. State*, 210 S.W.3d 618, 636 (Tex. Crim. App. 2006). The State is not required to disclose material exculpatory impeachment information and information supporting any affirmative defense before entering into a plea agreement

with a defendant. *United States v. Ruiz*, 536 U.S. 622, 633 (2002). Thus, an applicant must submit evidence supporting his claim, *see, e.g., Ex parte Richardson*, 70 S.W.3d at 871, and present facts to show materiality.

18. Under the two-prong standard for reviewing ineffective assistance of counsel claims, the Applicant must show that (1) counsel's representation fell below an objective standard of reasonableness *and* (2) counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 698 (1984); *See also McFarland v. State*, 845 S.W.2d 824, 842-43 (Tex. Crim. App. 1992). To establish the second prong of prejudice, defendant must show that there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Hernandez v. State*, 726 S.W.2d 53, 55 (Tex. Crim. App. 1986) (citing *Strickland*, 466 U.S. at 694 (1984)).
19. When a defendant enters his plea upon the advice of counsel and subsequently challenges the voluntariness of that plea based on ineffective assistance of counsel, the voluntariness of such plea depends on (1) whether counsel's advice was within the range of competence demanded of attorneys in criminal cases and if not, (2) whether there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).
20. The court has reviewed the affidavit of Robert Barrera and finds his responses to Applicant's claims for relief to be credible and truthful. His affidavit is incorporated herein by reference.
21. Mr. Barrera states in his affidavit that he discussed the alternative suspect with Applicant. He states that Applicant was "fully aware of the CODIS hit on Tyrone Baker at the time of his plea."
22. Mr. Barrera states that the DNA evidence did not exclude Applicant as the perpetrator of this

offense, but only confirmed that Tyrone Banks had been one of the Complainant's "dates" in the hotel room.

23. Moreover, stated Mr. Barrera, the CODIS hit did not surmount the positive photo identification of Applicant made by the Complainant as the assault perpetrator. .

24. The trial court referred this matter to the undersigned associate judge to preside over the writ hearing in this case.

25. The record from the writ hearing is incorporated herein by reference. This court takes judicial notice as specified in the hearing.

26. At the writ hearing Mr. Barrera was called as a witness. The court finds Mr. Barrera's testimony to be truthful and credible.

a. Mr. Barrera stated that "the communications that I had with Gresham were that all of his pending cases and cases yet to be indicted would be dismissed upon entering of a plea in this case. That was the basis of the communication. So, I don't believe leverage comes into that communication. It's a decision based upon evidence that is pending that he could be prosecuted for."

b. When asked about his conversation with Applicant about "the Tyrone Baker CODIS hit," Mr. Barrera stated that he and Applicant "had a conversation related to the risk of going to court, going to trial and the State being free to argue the same issue, multiple persons had access to that woman during the time she was in the room. And it was his decision whether or not he wanted to enter the plea or take the case to trial."

c. Mr. Barrera further stated that he "informed [Applicant] of the significance and of the factual information of the CODIS hit, of the fact that DNA of other people were

found in that room and that he had that information at the time he entered his plea, absolutely. He was aware of the material facts in this case upon which he made a decision. And I would not have entered a plea without informing him of such significant information as an alternate person being -- DNA being found in the room where he was alleged to have committed the assault. If that 17 cause number -- whatever it was -- 117 -- you stated that was the other one. If that was the sexual assault that was related on the same date, he pled to an aggravated assault with a deadly weapon. And I think -- I don't recall, honestly -- but I think that was part of the reason he did not plead to the sexual assault, because there was no DNA to tie him to that, and that's why -- I think that's why we pled him to the aggravated assault."

27. Bexar County records confirm that Applicant was convicted of DWI-3d (a felony) and sentenced to ten years in TDCJ in the same year Applicant was convicted in this case (2018) in Cause 2017CR8449. The judgment in this case stated that this 14-year sentence was to run concurrent with the 10-year sentence for Cause 2017CR8449.
28. At the time that Applicant entered into the plea agreement in this case, he had three other pending felonies. All three were dismissed as a result of Applicant agreeing to enter a plea agreement in this case. They are Cause 2016CR11755 (impersonating a public servant); Cause 2018CR4391 (sexual assault); and Cause JN 1820342 (aggravated assault deadly weapon).
29. Applicant also testified at the writ hearing. He denied that Mr. Barrera informed him of the information regarding Tyrone Baker. The court does not find Applicant's testimony refuting Mr. Barrera's testimony, to be truthful or credible.

30. ~~The court finds that Applicant has not met the burden of showing that he is actually innocent.~~

~~Ex parte Brown, 205 S.W.3d 538 (Tex. Crim. App. 2006).~~

31. ~~The court does not find credible Applicant's claim that he would have insisted on going to trial but for his attorney's ineffective assistance.~~

32. ~~Further, the court does not find that there is a reasonable probability that had the evidence he asserts herein been disclosed, the outcome of the trial would have been different. Ex parte,~~

~~Richardson, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002).~~

33. ~~The court does not find credible Applicant's claim that his plea was involuntary and/or that information had been improperly withheld from him.~~

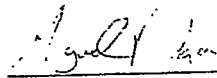
34. ~~Therefore, the court finds that Applicant has not met his burden to show that a Brady violation rendered his plea involuntary.~~

35. In addition, the court finds that Mr. Barrera's advice was within the range of competence demanded of attorneys in criminal cases. Thus, the court finds that Applicant has not met his burden to show that his counsel was ineffective. *Strickland v. Washington*, 466 U.S. 668, 698 (1984); *Hill v. Lockhart*, 474 U.S. 52 (1985).

36. ~~The trial court finds that Applicant obtained the benefit of his plea bargain. Had Applicant gone to trial, he would have faced convictions on two counts of first-degree felony aggravated sexual assault. However, by entering into the plea bargain, Applicant received a non sexual-related conviction and a sentence that was less than the maximum sentence for the second-degree felony offense. He also received dismissals on three other felony charges. (See Ex parte Barnaby, 475 S.W.3d 316 (Tex. Crim. App. 2015) (holding that the value of the plea bargain to applicant outweighed the value of knowing, before entering into his plea, the purported favorable evidence)).~~

37. Thus, the court finds that Applicant voluntarily and knowingly entered into his plea agreement.

38. Based upon the trial court's review of the writ record, it is recommended that Applicant's claims for relief be denied.

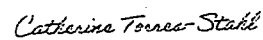


Associate Judge Miguel Najera
Bexar County, Texas

Jun 21, 2024

Date

APPROVED and ADOPTED ON Jun 21, 2024



Judge Catherine Torres-Stahl
175th Judicial District Court
Bexar County, Texas

MOTION TO RECONSIDER

BRYAN LAMAR GRESHAM

JANUARY 20, 2026

v

ERIC GUERRERO

Director, TDCJ-Institutional Division

NO.25-50539

IN THE UNITED STATES COURT OF APPEALS OF THE FIFTH CIRCUIT

MOTION FOR RECONSIDERATION

TO THE HONORABLE JUSTICES OF THIS CIRCUIT:

On January 7, 2025, I received notice of the denial of my Motion for a Certificate of Appealability (COA), decided on December 26, 2025, for case No. 25-50539 (USDC No. 5:25-CV-19), my cause of action against defendant, Eddie Guerrero. As of today, January 8, 2026, I, Bryan Lamar Gresham, hereby move for the matter to be reheard and reconsidered by a panel of justices.

POINT OF ERROR

THE CIRCUIT JUSTICE ERRED IN HOLDING THAT I, THE APPELLANT, HAVE NOT MADE THE REQUISITE SHOWING TO ESTABLISH MY PETITION REQUESTING A CERTIFICATE OF APPEALABILITY PRESENTS A VALID CLAIM, OF THE DENIAL OF MY CONSTITUTIONAL RIGHTS, THAT WOULD LEAD REASONABLE JURISTS TO DEBATE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING.

ARGUMENT

Though it has been outlined in each brief, including the brief supporting my petition for a COA (pp. 9-10), and supported by the record, including the statements highlighted by the State and the courts, what has been consistently overlooked, by the state courts, by the District Court, and now by the Appellate Court, is the fact that Trial Counsel claims to have received and reviewed only the report titled

"SAPD's SIA Serial Rapes Update," though the record shows differently. Beyond that, however, Trial Counsel makes no acknowledgment of the initial SIA report, issued "1/27/15" (though the dates in the report are from January 1, 2015 to January 13, 2016), even after being questioned during the evidentiary hearing. Trial Counsel's hearing testimony, his affidavit, the discovery log, and the "State's Notice of Retroactive Disclosure" all point to the fact that Trial Counsel was unaware of the initial SIA report, which is the report that specifically mentions my name, along with three other individuals, and San Antonio Police Department's initial assessment of the crimes detailed in the report (including the attack for which I stand accused).

The State's assessment concludes the attacks are part of a larger pattern, one involving gang members. The assessment is then further cemented in the Serial Rapes Update, in which the State establishes a suspect profile. The profile doubles down on the State's belief that those perpetrating the attacks were members of criminal enterprises.

The initial report also confirms the State believed DNA evidence would tie the named parties, including myself, to at least one of the attacks. Multiple reports, however, most notably the CIL report from May 5, 2016, and the CIL memo to SAPD, from August 5, 2016, describing the CODIS match, confirm that I am excluded as a DNA contributor in this case, specifically, and all other crimes, from across the country, in which a DNA sample has collected.

Taking Trial Counsel at his word, he would have been aware of the information contained in the Serial Rapes Update which, along with the suspect profile, details many of the attacks thought to be part of the larger pattern, including an attack that matches the M.O. of the attack for which I stand accused. But, the report does not mention me by name or reveal how significant SAPD believed DNA to be in furthering its cause in solving these cases.

Because he could not adequately analyze the full scope and context of SAPD's investigation, leading him to conclude, as he admits in his affidavit and hearing testimony, that the DNA reports excluding me as a DNA contributor were irrelevant, Trial Counsel's not being aware of both reports rendered his assistance ineffective.

Again, the initial SIA report was not provided to me until January 2024.

In reaching its conclusion, the Court contradicts the rulings and precedents established, by this Circuit, in very recent cases, most notably *Will v. Lumpkin*, 2024

(with regard to due diligence and violations of *Brady*) and *Holberg v. Lumpkin*, 2023 (with regard to impeachment evidence and ineffective assistance of counsel), both of which are cited in the brief supporting my petition (pg. 6, paras. 5-8; pg. 7, paras. 2-4; pg. 8, para. 7).

-If a detective's memo and a handwritten note by a jail inmate qualify as *Brady* material, then an official report, "SAPD SIA Report" from 1/27/15, produced by the police Chief and detailing an investigative inquiry, must also qualify as *Brady* material. The record shows it was withheld until January 25, 2024, thereby establishing that day as the earliest date at which the factual predicate could have been known.

-If a State's witness's history of being a paid confidential informant qualifies as *Brady* material, for impeachment purposes, even though the case in which the witness gave testimony is not a case for which she was classified as an informant, then so must a State's witness's documented sexual history with the defendant.

-If assistance is deemed ineffective due to counsel's lack of preparation of a witness, it must be deemed ineffective when counsel fails to prepare himself. By not investigating an indicted alternative suspect, whose DNA is connected to the crime scene, counsel failed to prepare himself. By not petitioning for the release of a video that undermines what counsel assumed would be the State's strategy, counsel failed to prepare himself. By not obtaining a report that concludes the crime for which I stand accused fits a larger pattern, a pattern in which there are myriad alternative suspects and an established profile I do not fit, counsel failed to prepare himself. These failings could not have been discovered through due diligence and were not known until Trial Counsel was compelled to testify at an evidentiary hearing, on May 21, 2024. Therefore, the date for establishing the factual predicate should be reset to the date of Trial Counsel's testimony.

Additionally, the Court contradicts the Supreme Court's finding in *House v. Bell*, 2006, regarding a showing of actual innocence that satisfies the *Schlup* standard. *House* is another case in which the lower courts discounted four key facts, facts the Supreme Court subsequently deemed sufficient to show actual innocence: 1) The State does not deny new evidence has been presented; 2) Defendant (Appellant) is excluded as a DNA contributor; 3) Another individual's DNA matches a sample of the DNA collected; 4) There is a named, known alternative suspect. In fact, the alternative suspect's DNA is connected to the crime scene, and he fits the description of the victim's attacker.

To satisfy *Schlup's* "new, reliable evidence" requirement, I introduced the three pieces of critical evidence that had been withheld by the State: the cell phone video, the initial Strategic Intelligence Analysis (SIA) report, and the "SIA Serial Rapes Update." Each item was withheld by the State prior my entering into a plea agreement, a fact no one denies. And, with regard to the SIA reports, these items were not made available to me until after I filed my second petition for a Writ of Habeas Corpus in state court.

In filing after filing, the defendants, first the State and now Mr. Guerrero, attempt to cling to procedural technicalities, without denying--or even acknowledging--the facts that render their arguments moot. Instead, what they do is rely on the words of Trial Counsel, the same individual whose assistance all objective evidence shows was below the standard of reasonableness established in *Strickland*. In fact, Trial Counsel's own words--from his referencing records that contradict his account, to his acknowledgement of his ignorance regarding the overlap between two crime scenes and their ties to a single individual, the alternative suspect, Tyrone Baker--honor his deficiencies, many of which are delineated in the brief supporting my petition for a COA (pp.9-10) and supported by the documents in the appendix (p.1-- "State's Notice of Retroactive Disclosure," p.7-- letter to San Antonio Police Department from Bexar County Criminal Investigations Lab, p.8-- the indictment of Tyrone Baker, p.15-- Trial Counsel's motion for the release of my cell phone, pp.16-23-- discovery log signed by Trial Counsel, pp.27-28-- State's list of witnesses, pp.29-31-- "State's Notice of Intent to Introduce Extraneous Offenses").

To date, the only references to the facts and evidence in the record have been made by me. It must be quite telling that the defendants have chosen to abandon their own evidence, instead, choosing to present red herrings such as procedural technicalities. Then, when the technicalities disfavor them, they rely on their connection to, and the broad powers of, an overburdened judiciary. If, for even only a moment, the facts are given their just consideration, the continuing injustice, that is my incarceration, may finally come to an end. That is what I ask of this esteemed panel.

I implore you all to reconsider my Motion for a COA. Between the withheld cell phone video, the withheld SIA reports, and Trial Counsel's lack of any measure of substantive assistance, in alignment with the Fifth Circuit's recent rulings and opinions (including dissenting opinions), I have more than met the burden of showing I have been denied the protections of several constitutionally-established

rights, including my right to effective counsel, my right to equal protection under the law, and my right to due process of law. Furthermore, I have met the Supreme Court's standards for a showing of actual innocence. To deny these truths truly is a miscarriage of justice.

I invite this Court to review any one--or all--of the following cases in which the Supreme Court establishes or maintains precedent. All have been cited, by me, in various briefs, including my brief supporting my motion for a COA. The evidence supporting each citation is included in the Appendix.

Please, bear in mind that these examples represent a fraction of the cases cited in my briefs. Each case directly correlates to specific arguments I have made. I am not asking this Court to set precedent, merely to uphold the precedents that have been set by the Supreme Court.

McQuiggins v. Perkins - "Actual innocence," "Miscarriage of justice exception," "Due diligence," "Bypass procedural bar, including one-year statute"

Petitioner waited 11 years to file federal petition, including six years after receiving the final piece of "new" evidence. Supreme Court held that a showing of actual innocence overcame petitioner's lack of diligence.

Murray v. Carrier (cited pg#10)- "Ineffective Assistance of Counsel," "Miscarriage of justice exception," "Bypass procedural bar"

Defense counsel failed to procure and present exculpatory evidence. Supreme Court held that Trial Counsel's failure constitutes ineffective assistance, and the petitioner's claim holds against any procedural default.

House v. Bell (cited pg#10,12)- "Actual innocence," "Miscarriage of justice exception," "Bypass procedural bar"

Supreme Court held that petitioner's evidence of actual innocence was sufficient to satisfy the *Schlup* standard by presenting evidence the State did not dispute new evidence had been admitted; a specific individual could have been committed the crime; petitioner is excluded as a DNA contributor. Thus, his showing of actual innocence was sufficient to overcome the State's argued procedural bar.

CONCLUSION

With my COA request, I am simply seeking an opportunity to do what has been denied to me for nearly a decade, since this entire ordeal crashed into my life, and that is to use the evidence to prove my innocence. Not once have I been afforded the ability to fairly present my case and have it decided on the merits. Instead, those who lacked--and continue to lack-- rightness use their power as a cudgel, first to coerce me into an unjust plea and, since, to beat back my efforts to shine light on the truth, to pull facts from the shadows. Their efforts to stall, suppress, and subvert are so blatant they might be laughable, if not for the many lives experiencing the negative impacts, not just my life and the lives of my family and friends, the lives of any other victims who have been attacked by the actual perpetrator(s).

Those who are guilty, those who are in the wrong, they push for technicalities, hope for even the most obscure procedural flaw. They do their best to distract from fact. Then, when they realize the technicalities of procedure do not fit the narrative they are trying to present, those with it use power to force the acceptance of what would normally be quickly dismissed as nonsense. In this matter, the defendants have proven to be the type who use their power to negate facts, in a conspicuous effort to subdue the powerless, based on nothing more than a refusal to accept the fact that a mistake was made.

For whatever reason--fear, ambition, indifference--I am an innocent man who has been incarcerated for the better part of a decade. I have been removed from society not because I am guilty of the crime for which I stand accused, but because of the whims of an overzealous prosecution, an underinvested defense counsel, my own naivety and the result of a flawed process.

However, even greater than the power of those unwilling to acknowledge and accept their mistakes is the power of those who are able to correct those mistakes. That is the power I am asking this panel of justices to embrace, the power of justice. Please, either grant my request for a COA and instruct the district court to adjudicate my claims based on their merits, or take the extra step and review my claims as a panel.

I am much more than a case number and a ream of documents. Please, see that.

Submitted with reverence by:

Bryan Lamar Gresham, petitioner/appellant

MOTION FOR LEAVE FOR AN EXTENSION

BRYAN LAMAR GRESHAM

JANUARY 8, 2026

v

ERIC GUERRERO

Director, TDCJ-Institutional Division

NO.25-50539

IN THE UNITED STATES COURT OF APPEALS OF THE FIFTH CIRCUIT

**MOTION FOR EXTENSION TO FILE A MOTION FOR
RECONSIDERATION**

TO THE HONORABLE JUSTICES OF THIS CIRCUIT:

Comes now Bryan Lamar Gresham, appellant, and files this motion for an extension of 30 days in which to file a motion for reconsideration. In support of this motion, appellant shows the court the following:

I.

The appellant filed a brief in this cause on July 8, 2025 and on December 26, 2025 this court denied appellant's petition for a certificate of appealability.

II.

The deadline for filing a motion for reconsideration in this cause was January 9, 2026. The appellant has not requested any extension prior to this request.

III.

Appellant's request for extension is based upon the following facts:

1. Though the order was issued on December 26, 2025 it was not mailed out until December 29, 2025 and was not postmarked until December 31, 2025.
2. Furthermore, the order was not received by appellant until January 7, 2026.

3. The first time appellant had notice or actual knowledge of the court's order was on January 7, 2026, a date no earlier than 15 days before the filing of this motion.
4. In accordance with Federal Rule of Appellate Procedure 40, appellant is allotted 14 days to file a motion for reconsideration. However, due to mailing delays, appellant was not given adequate time to prepare his motion.

WHEREFORE, appellant hopes the court grants this motion and extends the deadline for filing the motion for reconsideration to February 8, 2026.

Bryan L. Gresham

Bryan L. Gresham, Appellant
January 8, 2026

4304 HWY 202 (Garza East)
Beeville, TX 78102

COURT OF APPEALS ORDER
(Motion to Reconsider)

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 26, 2026

#02197084
Mr. Bryan Lamar Gresham
CID Garza East Transfer Facility
4304 Highway 202
Beeville, TX 78102-0000

No. 25-50539 Gresham v. Guerrero
USDC No. 5:25-CV-19

Dear Mr. Gresham,

We will take no action on your motion for reconsideration because it is untimely. The time for filing a motion for reconsideration under 5th Cir. R. 27 has expired.

Your motion to extend time to file a motion for reconsideration/rehearing was denied.

Sincerely,

LYLE W. CAYCE, Clerk

Renee Mc Donough

By:

Renee S. McDonough, Deputy Clerk
504-310-7673

cc:

Ms. Justine Isabelle Caedo Tan

COURT OF APPEALS ORDER
(Motion for Extension)

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 23, 2026

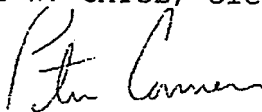
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-50539 Gresham v. Guerrero
USDC No. 5:25-CV-19

-- The court has taken the ~~following action~~ in this case: Appellant's motion for an extension of time to file reconsideration is DENIED.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Peter A. Conners, Deputy Clerk
504-310-7685

Mr. Bryan Lamar Gresham
Ms. Justine Isabelle Caedo Tan

State Writ Application (Writ 1)

**Petition for Relief From a Conviction or Sentence
By a Person in State Custody**

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

Instructions

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this petition.
6. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$, you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and copies to the Clerk of the United States District Court at this address:

**Clerk, United States District Court for
Address
City, State Zip Code**

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District: <u>SOUTHERN DISTRICT OF TEXAS</u>
Name (under which you were convicted): <u>BRYAN LAMAR GRESHAM</u>		Docket or Case No.: <u>2016CR11152</u>
Place of Confinement: <u>TEXAS DEPARTMENT OF CRIMINAL JUSTICE: INSTITUTIONAL DIVISION- CARTA WEST UNIT</u>		Prisoner No.: <u>02147084</u>
Petitioner (include the name under which you were convicted): <u>BRYAN LAMAR GRESHAM</u>		Respondent (authorized person having custody of petitioner): <u>EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE</u>
The Attorney General of the State of: <u>TEXAS</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
175TH DISTRICT COURT
BEXAR COUNTY, TX
SAN ANTONIO, TX 78205
- (b) Criminal docket or case number (if you know): 2016CR11152
2. (a) Date of the judgment of conviction (if you know): MAY 4, 2018
- (b) Date of sentencing: MAY 4, 2018
3. Length of sentence: 14 YEARS
4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No
5. Identify all crimes of which you were convicted and sentenced in this case: AGGRAVATED ASSAULT
DEADLY WEAPON
6. (a) What was your plea? (Check one)

☐ (1) Not guilty	☒ (3) Nolo contendere (no contest)
☒ (2) Guilty	☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you seek further review by a higher state court? ☐ Yes

☒ No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☐ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: COURT OF CRIMINAL APPEALS OF TEXAS
- (2) Docket or case number (if you know): 2016 CR11156-L11
- (3) Date of filing (if you know): DECEMBER 10, 2018
- (4) Nature of the proceeding: APPLICATION FOR WRIT OF HABEAS CORPUS
- (5) Grounds raised: "REVELATION OF NEW EVIDENCE"
"LITIGATING OF EVIDENCE FAVORABLE TO THE DEFENDANT"

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result: WRIT RELIEF DENIED

(8) Date of result (if you know): APRIL 24, 2019

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: COURT OF CRIMINAL APPEALS OF TEXAS

(2) Docket or case number (if you know): 2016 CR1156-152

(3) Date of filing (if you know): JUNE 12, 2017

(4) Nature of the proceeding: APPLICATION FOR WRIT OF HABEAS CORPUS

(5) Grounds raised: INVOLUNTARY PLEA

ACTUAL INNOCENCE

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(7) Result: TRIAL COURT ISSUED AN OPINION RECOMMENDING RELIEF BE DENIED

(8) Date of result (if you know): JUNE 21, 2017

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☒ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: I, BRYAN LAMAR LESHAM, AM ACTUALLY INNOCENT OF THE OFFENSE
OF WHICH I AM ACCUSED AND TO WHICH I PLED "NO CONTEST."

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

BY AN OVERWHELMING PREPONDERANCE, THE EVIDENCE SHOWS I HAD NO PHYSICAL
INTERACTION WITH THE CLAIMANT, LAURA SMITH. I AM EXCLUDED AS A CONTRIBUTOR
OF ANY OF THE MANY DNA SAMPLES COLLECTED. MY FINGERPRINTS ARE NOT PRESENT
DURING THE PHOTO LINE-UP. MS SMITH MISIDENTIFIED ME A SAMPLE OF DNA
COLLECTED MATCHES A SEPARATE SCENE OF SIMILARLY ALLEGED ACTIVITY
AND IMPLICATES A SPECIFIC INDIVIDUAL, TYRONE BAKER.

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

MOTION FOR AN EVIDENTIARY HEARING

Name and location of the court where the motion or petition was filed:

*175TH DISTRICT COURT**BEXAR COUNTY, TX - SAN ANTONIO, TX 78205*

Docket or case number (if you know):

2016 CR11156-L2

Date of the court's decision:

JUNE 21, 2024

Result (attach a copy of the court's opinion or order, if available):

OPINION ATTACHED

(3) Did you receive a hearing on your motion or petition?

☒ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: *APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS*

GROUND TWO:

TRIAL COUNSEL WAS INSUFFICIENTLY AWARE OF MATERIAL FACTS PERTAINING TO PRIMARY AND CONSIDERED CASE, RENDERING THEIR ASSISTANCE INEFFECTIVE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

WHEN ADVISING ME TO PLEA, TRIAL COUNSEL DID NOT KNOW A POTENTIAL ALTERNATE SUBJECT, THEREFORE WAS ABL TO FORGET IN A SIMILAR, OVERLAPPING CASE TRIAL COUNSEL WAS NOT ABLE TO INFORMATION CONTAINED IN A REPORT, ENTITLED "A SERIAL RABBIT HOLE" RELEASED BY DADA IN FEBRUARY 2001, OFFERING A LIST OF ALTERNATIVE SUBJECTS. TRIAL COUNSEL WILLFULLY DISREGARDED THE EXISTENCE OF EXCULPATORY IMPEACHMENT EVIDENCE. TRIAL COUNSEL FAILED TO INVESTIGATE THE ALLEGED VICTIM. TRIAL COUNSEL FAILED TO CHALLENGE THE ALLEGED VICTIM'S IDENTIFICATION OF HER CLAIMED ATTACKER.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) Direct Appeal of Ground Two:

- (1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No
- (2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: *MOTION FOR AN EVIDENTIARY HEARING*

Name and location of the court where the motion or petition was filed: *175TH DISTRICT COURT*

BEXAR COUNTY, TX

SAN ANTONIO, TX 78205

Docket or case number (if you know): *2016CP1056-W2*

Date of the court's decision: JUNE 21, 2024

Result (attach a copy of the court's opinion or order, if available):

OPINION ATTACHED

(3) Did you receive a hearing on your motion or petition?

☒ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS

GROUND THREE:

DESPITE MULTIPLE DISCLOSURE REQUESTS AND REPEATED DELAYED TRIAL SETTINGS, THE STATE FAILED TO TURN OVER MATERIAL EXCULPATORY EVIDENCE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE RECORD DOES SHOW THE STATE DID POSSESS—AND DID NOT DISCLOSE TO TRIAL COUNSEL OR THE DEFENDANT—MULTIPLE PIECES OF MATERIAL EXCULPATORY EVIDENCE: THE "STRATEGIC INTELLIGENCE AND ANALYSIS" REPORT, "CIA SERIAL RAPE UPDATES" RELEASED BY SAPA IN FEBRUARY 2016; A VIDEO, STORED ON THE DEFENDANT'S PHONE, SHOWING A CONSENSUAL SEXUAL ENCOUNTER BETWEEN HIM AND A WITNESS FOR THE STATE.

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) **Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No
- (2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: MOTION FOR AN EVIDENTIARY HEARING

Name and location of the court where the motion or petition was filed: 175TH DISTRICT COURT
BEXAR COUNTY, TX — SAN ANTONIO, TX 78205

Docket or case number (if you know): 7646CX11156-W2

Date of the court's decision: JUNE 21, 2024

Result (attach a copy of the court's opinion or order, if available): OPINION ATTACHED

- (3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

- (4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

- (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: *APPLICATION FOR POST-CONVICTION HEARING OF HABEAS CORPUS*

GROUND FOUR: *DESPITE REASONABLE DILIGENCE, I DID NOT HAVE SUFFICIENT FACTUAL AWARENESS OF THE CIRCUMSTANCE SURROUNDING THIS CASE, RENDERING MY GUILTY PLEA INVOLUNTARY*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PRIOR TO PLEADING, I WAS UNAWARE AN ALTERNATE SUSPECT HAD BEEN IDENTIFIED AND LINKED TO THIS CASE, AND ANOTHER OF A SIMILAR NATURE, USING DNA ANALYSIS. THE SAME ANALYSIS THAT EXONERATES ME. IN ADDITION TO A SPECIFIC INDIVIDUAL BEING IDENTIFIED AS AN ALTERNATE SUSPECT, I WAS UNAWARE OF A REPORT RELEASED BY SAID IN FEBRUARY 2016, DETAILING CRIMES CONTAINING ELEMENTS OF THE ALLEGATION LEVIED IN THIS CASE AND OFFERING A VAST POOL OF ALTERNATIVE SUSPECTS, PLUS A FAILED ATTEMPT BY THE STATE TO ESTABLISH A LINK BETWEEN ME AND SEVERAL NAMED SUSPECTS OR ANY ONE OF THE MANY CRIME SCENES

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: *MOTION FOR AN EVIDENTIARY HEARING*

Name and location of the court where the motion or petition was filed:

175TH DISTRICT COURT

BEXAR COUNTY, TX - SAN ANTONIO, TX 78205

Docket or case number (if you know):

2020CR1156-WZ

Date of the court's decision:

JUNE 21, 2024

Result (attach a copy of the court's opinion or order, if available):

OPINION ATTACHED

(3) Did you receive a hearing on your motion or petition?

☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

OF HABEAS CORPUS

APPLICATION FOR POST-CONVICTION WRIT

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

LAW ENFORCEMENT USE ONLY

STRATEGIC INTELLIGENCE
AND ANALYTICS

San Antonio Police Department
Chief William McManus

Lead 01-27-15

Appears to be at least one serial rapist group with a potential of 3 groups contained within the initial 11 cases
7/13/2015

1) 2-3 BMs - red background
SAPD16000199 - ROBBERY AND RAPE
SAPD15276801 - ROBBERY AND RAPE
SAPD15268208 - ROBBERY AND RAPE
SAPD15248877 - ROBBERY AND RAPE
SAPD15242727 - ROBBERY AND RAPE

2) BM and 1-2 LMs - claiming to be police raiding for drugs & drug money - blue background
SAPD15187142 - ROBBERY AND RAPE
SAPD16017941 - robbery yesterday that possibly fits mo on above listed case

3) 2 BMs - green background
SAPD15088301 - ROBBERY AND RAPE -- still trying to determine if it is part of or separate from the above
listed series (1)

What we know or is suspected as of now:

- Gang members but not necessarily gang activity
- Robbery is motive; the sexual assault is secondary
 - Strictly robberies prior to sexual assault cases and also within the gaps
- Escorts are being targeted between 23:00 - 05:00 with 02:00 - 04:00 being the primary time; it is assumed that the meetings are being set up this late in order to obtain the most amount of financial profit from their victims.
- Thursday - Sunday are the target days with Saturday late evening and Sunday morning having the highest prevalence.

What is under review:

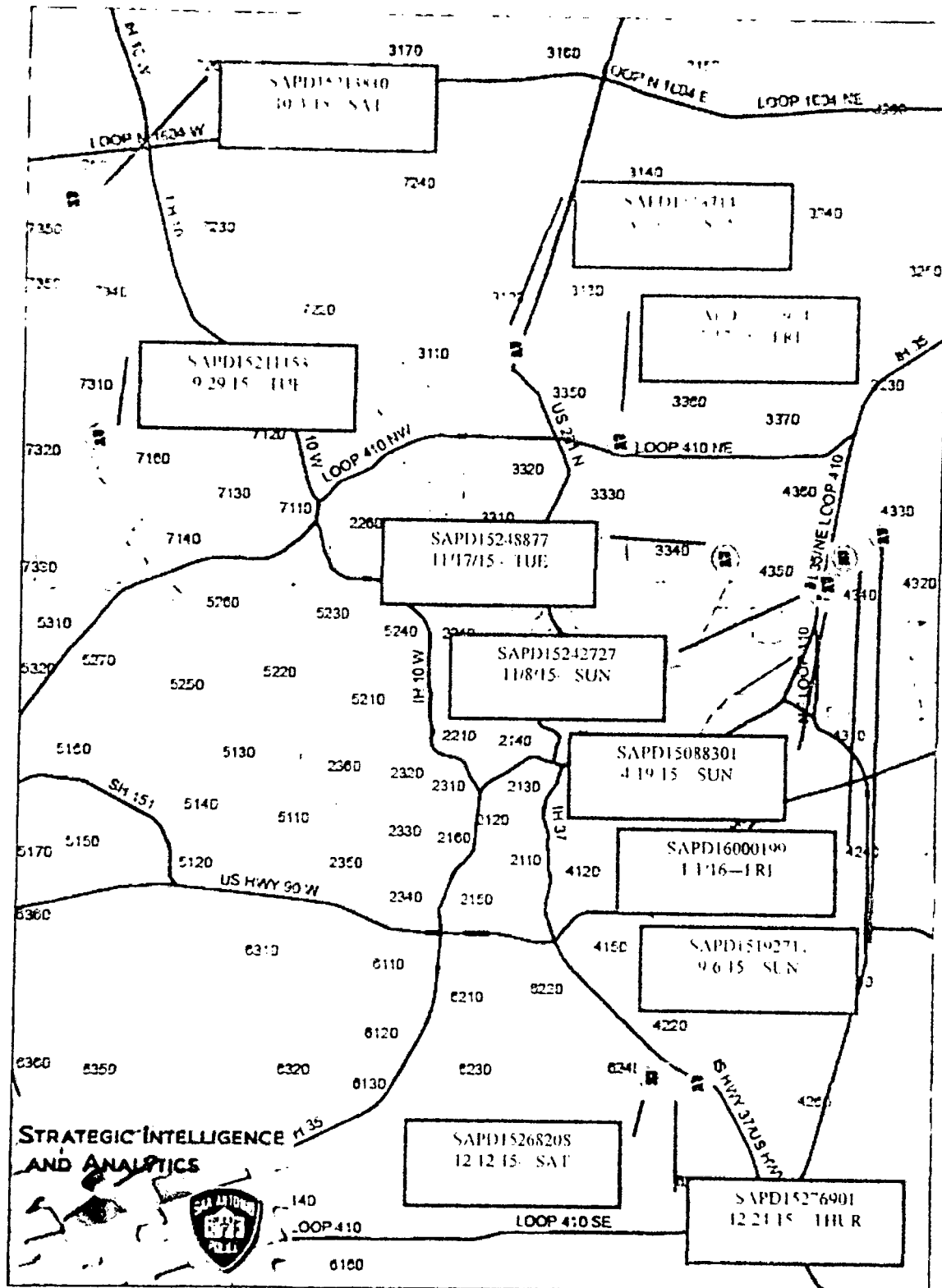
- 162 Robberies and 81 sexual assaults at or near hotels and motels have been mined from 2015 incident data and will be analyzed in accordance with their relation to the above suspected and potential series
- Attempting to establish a link between the individuals that have been identified by SVU (Stephen Wansley, Bryan Gresham, Lonnie Williams and Tyrell Jones)

What SIA needs:

The suspect phone numbers for the cases marked on the case details report (SAPD16000199; SAPD15268208; SAPD15248877)

Waiting on DNA results via used condoms recovered from SAPD15248877 (believed to be part of series 1) and SAPD15187142

Potential Serial Rapist
1/1/2015 - 1/13/2016



Dear: Mrs. Sarah Durham

2-18-24

Hi: My name is as follows
Stephen D. Wansley. I've been asked
about a case that the (SAPD) are
investigating. I do not know a
thing about it or about Mr. Bryan Graham.
There is not much to say but I pray
this statement will help out in this
case. Thank you and God bless.

Respectfully,

Stephen Wansley

to: John Wansley, #02103856
10 Clemens Unit
1034 Hwy 36
Yazoria, TX 77422

NORTH - JUSTICE TO THE 006
20 FEB 1971 - PM 1 L

B. Zardani, Z. Zardani, Attorneys
1174 North 3rd Street
Abilene, TX 79601

79601-582174

|||||

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Jacob Blizzard on behalf of Sarah Durham

Bar No. 24116309

Jacob.Blizzard@blizzardlawfirm.com

Envelope ID: 87143325

Filing Code Description: Free Text -5100

Filing Description: Supplement to 11.07 Brief in Support

Status as of 4/30/2024 11:08 AM CST

Associated Case Party: BRYANLAMARGRESHAM

Name	BarNumber	Email	TimestampSubmitted	Status
Yazmin Campbell		yazmin@blizzardlawfirm.com	4/29/2024 9:02:06 AM	SENT
Morgan Walker		morgan@blizzardlawfirm.com	4/29/2024 9:02:06 AM	SENT
Jacob Blizzard		jacob.blizzard@blizzardlawfirm.com	4/29/2024 9:02:06 AM	SENT
Sarah Dunham		sarah@blizzardlawfirm.com	4/29/2024 9:02:06 AM	SENT
Terry Reeves		terry.reeves@blizzardlawfirm.com	4/29/2024 9:02:06 AM	SENT

Associated Case Party: BEXAR COUNTY DISTRICT ATTORNEY'S OFFICE

Name	BarNumber	Email	TimestampSubmitted	Status
Bexar County CIU		ciu@bexar.org	4/29/2024 9:02:06 AM	SENT
Eva Estrada		Eva.Estrada@bexar.org	4/29/2024 9:02:06 AM	SENT
Lauren Zamora		Lauren.Zamora@bexar.org	4/29/2024 9:02:06 AM	SENT
Bianca Espinosa		bianca.espinosa@bexar.org	4/29/2024 9:02:06 AM	ERROR

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Barbara Paulissen		bpaulissen@bexar.org	4/29/2024 9:02:06 AM	SENT

RESPONDENT'S ANSWER WITH BRIEF IN SUPPORT

- a. an "overwhelming preponderance" of the evidence shows that he had no physical contact with the complainant;
 - b. he was excluded as a DNA contributor and his fingerprints were not present at the scene;
 - c. the complainant misidentified him in a photo lineup; and
 - d. a DNA sample implicates an alternative suspect, Tyrone Baker;
2. Trial counsel was ineffective for:
 - a. failing to know material facts related to the charged offense and related cases;
 - ~~the~~ b. failing to investigate the complainant; and
 - c. failing to challenge the complainant's identification of Gresham as her attacker;
 3. The State failed to disclose multiple pieces of exculpatory evidence, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); and
 4. His plea was involuntary because, despite his reasonable diligence, he lacked sufficient knowledge of the facts of his case at the time he made his plea.

ECF 1 at 5-10; ECF 2 at 9-30.

GENERAL DENIAL

The Director denies all of Gresham's assertions of fact except those supported by the record or specifically admitted herein. In addition, the Director opposes any future, substantive motions filed by Gresham and will respond to any such motions only upon order of the Court.

If assertions are supported by the record, Trial Court's findings are not.

STATEMENT OF THE CASE

The Director has lawful custody of Gresham pursuant to the judgment and sentence of the 175th District Court of Bexar County, Texas, in cause number 2016CR11156, styled *The State of Texas v. Bryan Lamar Gresham*. SHCR-01 at 103–04.¹ Gresham was charged by indictment with four counts of aggravated sexual assault, a first-degree felony. *Id.* at 83–84; Tex. Penal Code § 22.021. Pursuant to a plea-bargain agreement, he pled nolo contendere to count one, which was reduced to aggravated assault with deadly weapon, a second-degree felony. SHCR-01 at 86–95, 103; Tex. Penal Code § 22.02. He was sentenced to fourteen years of incarceration on May 4, 2018, to be served concurrently with his ten-year sentence for driving while intoxicated (3rd or more). SHCR-01 at 103–04; see SHCR-02 at 44 (judgment in cause number 2017CR8449). He did not appeal. SHCR-01 at 6 (no. 12).

Gresham filed a state application for writ of habeas corpus challenging his conviction, at the earliest,² on November 16, 2018. SHCR-01 at 20. The application was denied without written order on the findings of the trial court without a hearing on April 24, 2019. SHCR-01 at Action Taken.

Through habeas counsel, Gresham filed a second state application for writ of habeas corpus challenging his conviction on June 12, 2023. SHCR-03 at 22. After an evidentiary hearing, the state habeas court entered findings of

¹ “SHCR-01” refers to the written pleadings contained within the Clerk’s Record of *Ex parte Gresham*, No. 89,623-01 (Tex. Crim. App. 2019) and is followed by the applicable page numbers. His other state habeas applications are similarly named.

² The prison mailbox rule applies to state habeas applications. *Richards v. Thaler*, 710 F.3d 573, 578–79 (5th Cir. 2013). The Director reserves the right to argue a later filing date than the date Gresham signed his state habeas application.

facts, conclusions of law, and recommended that the application be denied. *Id.* at 258–363 (evidentiary hearing record), 364–74 (findings of fact and conclusions of law). The application was denied without written order on the findings of the trial court without a hearing and on the court’s independent review of the record on October 9, 2024. SHCR-03 at Postcard Notice.

Gresham filed the instant petition on or around December 21, 2024. ECF 1 at 15.³

STATE COURT RECORDS

Records of Gresham’s state habeas proceedings have been filed with the Court.

EXHAUSTION/LIMITATIONS/SUCCESSIVE PETITION

Gresham’s petition is not subject to the successive petition bar. 28 U.S.C. § 2244(b).

Gresham’s claim of actual innocence, claim 1, is not cognizable on federal habeas review, and as such, the affirmative defenses are not applicable. The Director reserves the affirmative defenses should the Court disagree.

Gresham’s remaining claims—and claim 1 to the extent the Court understands Gresham to allege insufficient evidence—are barred by the statute of limitations. 28 U.S.C. § 2244(d). The Director reserves the right to

³ A federal petition is deemed filed on the date that the petitioner declares under penalty of perjury that he placed it in the prison mail system. *See Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir. 1998).

No reason given for
not presenting "substantial"
- "prejudicial" defenses
- present answer, after
having been given
an additional thirty days
reply.

argue exhaustion and procedural bar should the Court disagree with the
Director's analysis of the statute of limitation defense. 28 U.S.C. § 2254(b), (c).

ANSWER

I. Gresham's Actual Innocence Claim is Not Cognizable. (Claim 1)

McFarland v. Scott
512 U.S. 849, 860
"actual undermining
of plea"

Gresham asserts that he is actually innocent of the offense to which he

pled nolo contendere. ECF 1 at 5; ECF 2 at 9-14. However, this claim must be

Harris v. Wallace
494 F.2d 141, 149
"Attachment considered
with petition"

rejected because it does not raise a ground upon which federal habeas relief

may be granted. According to the Supreme Court, claims of newly discovered

evidence, casting doubt on the petitioner's guilt, are not cognizable in federal

habeas corpus. *Herrera v. Collins*, 954 F.2d 1029, 1034 (5th Cir. 1992) (quoting

Jones v. Service
20 F.3d 849, 858
"-district court obligated
analysis all alleged
facts to determine
whether they state a
federal claim."

Townsend v. Sain, 372 U.S. 293, 317 (1963), overruled on other grounds by

Keeney v. Tamayo-Reyes, 504 U.S. 1, 6 (1992)). On review of *Herrera*, the

Supreme Court further stated:

Claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding This rule is grounded in the principle that federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution - not to correct errors of fact.

Herrera, 506 U.S. 390, 400 (1993). Therefore, because claims of actual innocence fail to state a ground for federal habeas corpus relief, Gresham's actual innocence claim must be dismissed with prejudice. *Lucas v. Johnson*, 132 F.3d 1069, 1075-76 (5th Cir. 1998).

1076-1077

Herrera is not the proper precedent, Estep v. Shipley.

II. Gresham's Claims are Time Barred.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides that:

(d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

The Court should dismiss Gresham's claims as untimely pursuant to the statute of limitations provided in § 2244(d) of AEDPA. As an initial matter, the

State's retroactive
discovery

Ongoing duty to

disclose *Brannan v. State*

852 S.W.2d
107, 109 (Tex.
Crim. App. 1988)

record does not indicate that any unconstitutional "State action" prevented Gresham from filing for federal habeas corpus relief prior to the end of the limitation period. See 28 U.S.C. § 2244(d)(1)(B). Also, Gresham's claims do not concern a constitutional right recognized by the Supreme Court within the last year and made retroactive to cases on collateral review. See 28 U.S.C. § 2244(d)(1)(C).

Gresham argues that he is entitled to a later factual predicate date:

[T]he predicate facts, especially with respect[] to grounds two and three, were unveiled only as a result of a subsequent writ filing, which led to an evidentiary hearing, revealing multiple pieces of material facts that had been long withheld, despite my dogged diligence and best attempts to obtain all discoverable files and exculpatory evidence, since March 2016.

As outlined in the grounds, the State withheld a report that offers a vast pool of alternative suspects and shows a failed attempt to link me to similar crimes. Though I was initially arrested in March 2016, and the report was released in February 2016, the State did not disclose any part of the report until March 2023. Additional pieces of the report were not disclosed until January 2024.

Furthermore, resisting my most earnest efforts, trial counsel did not provide details, pertaining to his knowledge relevant to this case or his actions taken in preparation for my defense, until May 21, 2024, during the evidentiary hearing. Therefore, the date on which the factual predicate of the claims presented could have been discovered through the exercise of due diligence is May 21, 2024, and certainly no earlier than January 2024.

ECF 1 at 13–14; ECF 2 at 4–5; see 28 U.S.C. § 2244(d)(1)(D). In other words, Gresham alleges that he could not have discovered the factual predicate of his claims until trial counsel, Robert Barrera, testified at the state habeas evidentiary hearing on May 21, 2024, or at least not until January 2024, when

Make no mention
of 5th report

he alleges to have learned of facts that were previously undisclosed to him, e.g.,

information about an alternative suspect, Tyrone Baker. *Id.*; see ECF 1 at 5.

But this is untrue. The state habeas court found, in relevant part:

Reiterate challenges
to state court's
findings

20. The court has reviewed the affidavit of Robert Barrera and finds his responses to [Gresham]'s claims for relief to be credible and truthful. His affidavit is incorporated herein by reference.

Also note that information
of a CODIS hit is 21.
not the same as presenting
an alternative suspect.
An individual's DNA may be
entered into CODIS for a
number of reasons, being
linked to a different crime
of a similar nature. That's
what makes Tyrone Baker a
viable alternative suspect.

Mr. Barrera states in his affidavit that he discussed the alternative suspect with [Gresham]. He states that [Gresham] was "fully aware of the CODIS [(Combined DNA Index System)] hit on Tyrone Baker at the time of his plea."

* * *

At the writ hearing[,] Mr. Barrera was called as a witness. The court finds Mr. Barrera's testimony to be truthful and credible.

- a. Mr. Barrera stated that "the communications that I had with Gresham were that all of his pending cases and cases yet to be indicted would be dismissed upon entering of a plea in this case. That was the basis of the communication. So, I don't believe leverage comes into that communication. It's a decision based upon evidence that is pending that he could be prosecuted for."
- b. When asked about his conversation with [Gresham] about "the Tyrone Baker CODIS hit," Mr. Barrera stated that he and [Gresham] "had a conversation related to the risk of going to court, going to trial and the State being free to argue the same issue, multiple persons had access to that woman during the time she was in the room. And it was his decision whether or not he wanted to enter the plea or take the case to trial."

Trial Counsel's saying
"CODIS hit" without relating it
to the potential for another
to be considered a suspect,
places the burden on the
defendant, who is likely undecided
in law, to draw the connection.
Trial Counsel was deficient in
his duty to make clear Tyrone
Baker could be an alternative suspect
based on the DNA connection. Nothing
in Trial Counsel's testimony indicates
he made any such attempt. Instead,
his affidavit and testimony make clear
his opposition to such a strategy.

Because he hadn't investigated
Tyrone Baker, Trial Counsel
did not possess the knowledge
to properly inform me of the
significance of the CODIS hit.
In fact, in this statement, he
downplays, and practically rules
out, any significance.

- c. Mr. Barrera further stated that he "informed [Gresham] of the significance and of the factual information of the CODIS hit, of the fact that DNA of other people were found in that room and that he had that information at the time he entered his plea, absolutely. He was aware of the material facts in this case upon which he made a decision. And I would not have entered a plea without informing him of such significant information as an alternate person . . . DNA being found in the room where he was alleged to have committed the assault. If that 17 cause number . . . 117 . . . the other one. If that was the sexual assault that was related on the same date, he pled to an aggravated assault with a deadly weapon. And I . . . think that was part of the reason he did not plead to the sexual assault, because there was no DNA to tie him to that . . . I think that's why we pled him to the aggravated assault."

* * *

29. [Gresham] also testified at the writ hearing. He denied that Mr. Barrera informed him of the information regarding Tyrone Baker. The court does not find [Gresham]'s testimony refuting Mr. Barrera's testimony[] to be truthful or credible.

* * *

State does not dispute being
in possession of my place, without a
warrant, at the time of the plea

33. The court does not find credible [Gresham]'s claim that his plea was involuntary and/or that information had been improperly withheld from him.

State does not dispute
SSA's equivocal materiality
as that is what was withheld

34. Therefore, the court finds that [Gresham] has not met his burden to show that a *Brady* violation rendered his plea involuntary.

Will v. Lumphin, 2024 U.S. Dist. LEXIS 61904

the amount of time SSA was
withheld and that the defense is not
qualified to assume the state is
withholding evidence

35. In addition, the court finds that Mr. Barrera's advice was within the range of competence demanded of attorneys in

criminal cases. Thus, the court finds that [Gresham] has not met his burden to show that his counsel was ineffective. *Strickland v. Washington*, 466 U.S. 668, 698 (1984); *Hill v. Lockhart*, 474 U.S. 52 (1985).

SHCR-03 at 370–73 (citing SHCR-03 at 209–13 (trial counsel affidavit), 258–363 (evidentiary hearing record)). Gresham does not overcome these factual findings with clear and convincing evidence. 28 U.S.C. § 2254(e)(1). There is no support for Gresham’s allegations that material facts were withheld from him or that his plea was based on his insufficient knowledge of the facts caused by ineffective counsel. Thus, Gresham cannot claim a new factual predicate date for his claims. See 28 U.S.C. § 2244(d)(1)(D).

Conviction finality therefore governs the timeliness of Gresham’s claims, and they are made too late. See 28 U.S.C. § 2244(d)(1)(A). Gresham was sentenced on May 4, 2018, and he did not appeal. SHCR-01 at 6 (no. 12), 103–04. Therefore, his conviction became final thirty days later on June 3, 2018, when his time in which to appeal expired. See *Roberts v. Cockrell*, 319 F.3d 690, 693–95 (5th Cir. 2003) (finality determined by expiration of time for filing further appeals); Tex. R. App. Proc. 26.2(a)(1). Accordingly, the one-year limitation period for filing a federal petition expired one year later, on June 3, 2019, absent tolling. 28 U.S.C. § 2244(d)(1)(A); Fed. R. Civ. Proc. 6.

AEDPA provides that “the time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this section.” 28 U.S.C. § 2244(d)(2). Gresham’s first state habeas application was pending from November 16, 2018, to April 24, 2019, for

Retrospective Discovery
J.F. v. Johnson
370 F.3d 612, 620
(5th Cir. 1999)
central to impeaching
witnesses need not be
disclosed
citing United States v.
Cochran, 697 F.2d
608, 605 (5th Cir. 1983)

Arguing duty to
disclose material
evidence

a total of 160 days, which extended his deadline until November 11, 2019. Fed. R. Civ. Proc. 6. He challenged his conviction a second time on June 12, 2023, after the limitations period had already expired; thus, there was no tolling effect. See SHCR-03 at 22; *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000) (stating that a state habeas writ application filed after the expiration of the limitations period has no tolling effect). Therefore, the instant petition, filed on December 21, 2024, is over five years late. ECF 1 at 15. As a result, Gresham's claims should be dismissed with prejudice as time barred.

burden shifts
from showing innocence

Gresham asserts that the instant petition is exempt from the statute of limitations because he is actually innocent. ECF 1 at 13; ECF 2 at 4. Just as Gresham fails to establish that he is entitled to a later factual predicate date, he fails to meet the demanding standard for actual innocence presented in *Schlup* in order for time-barred claims to be considered. *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1935 (2013); *Schlup v. Delo*, 513 U.S. 298, 314–16 (1995). In *Perkins*, the Supreme Court held a prisoner filing a first-time federal habeas petition could overcome the one-year statute of limitations in § 2244(d)(1) upon a showing of “actual innocence” under the standard in *Schlup*. 133 S. Ct. at 1935. A habeas petitioner, who seeks to surmount a procedural default through a showing of “actual innocence,” must support his allegations with “new, reliable evidence” that was not presented at trial and must show that it was more likely than not that, in light of the new evidence, no juror, acting reasonably, would have voted to find the petitioner guilty beyond a reasonable doubt. *Schlup*, 513 U.S. at 326–27 (1995); see also *House v. Bell*, 547 U.S. 518, (2006) (discussing at length the evidence presented by the petitioner in support

- Court held action
may proceed

The State does not
dispute new evidence
has been introduced.
Excluded as ANA
contributor.
- Another's DNA was
found to be a match
- Evidence submitted
showing Tyrone Baker
could have done it
- Other details presented
- Evidence taken in
hastily likely results in
any reasonable juror having
reasonable doubt

of an actual-innocence exception to the doctrine of procedural default under *Schlup*). "Actual innocence" in this context refers to factual innocence and not mere legal sufficiency. *Bousely v. United States*, 523 U.S. 614, 623-624 (1998).

In the second habeas proceeding where Gresham challenged his conviction, the state habeas court found, in relevant part:

22. Mr. Barrera states that the DNA evidence did not exclude [Gresham] as the perpetrator of this offense, but only confirmed that Tyrone [Baker] had been one of the Complainant's "dates" in the hotel room.

- Report states attachment left
- piece of the record

23. Moreover, stated Mr. Barrera, the CODIS hit did not surmount the positive photo identification of [Gresham] made by the Complainant as the assault perpetrator.

* * *

28. At the time that Applicant entered into the plea agreement in this case, he had three other pending felonies. All three were dismissed as a result of Applicant agreeing to enter a plea agreement in this case. They are Cause 2016CR11755 (impersonating a public servant); Cause 2018CR4391 (sexual assault); and Cause JN 1820352 (aggravated assault deadly weapon).

- Evidence of excessive
- practices as part of state

* * *

30. The court finds that [Gresham] has not met the burden of showing that he is actually innocent. *Ex parte Brown*, 205 S.W.3d 538 (Tex. Crim. App. 2006).

- No reasoning provided
- Nothing in record to indicate
- guilt

31. The court does not find credible [Gresham]'s claim that he would have insisted on going to trial but for his attorney's ineffective assistance.

32. Further, the court does not find that there is a reasonable probability that had the evidence he asserts herein been disclosed, the outcome of the trial would have been different.

Ex parte Richardson, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002).

* * *

36. The trial court finds that [Gresham] obtained the benefit of his plea bargain. Had [Gresham] gone to trial, he would have faced convictions on two counts of first degree felony aggravated sexual assault. However, by entering into the plea bargain, [Gresham] received a non sexual-related conviction and a sentence that was less than the maximum sentence for the second-degree felony offense. He also received dismissals on three other felony charges. See *Ex parte Barnaby*, 475 S.W. 316 (Tex. Crim. App. 2015) (holding that the value of the plea bargain to applicant outweighed the value of knowing, before entering into his plea, the purported favorable evidence).

37. Thus, the court finds that [Gresham] voluntarily and knowingly entered into his plea agreement.

SHCR-03 at 370–74. Gresham does not overcome these factual findings with clear and convincing evidence. 28 U.S.C. § 2254(e)(1). His bald assertions of actual innocence are insufficient to demonstrate that it is more likely than not that no reasonable juror would have convicted him in light of newly presented evidence, especially in light of his plea of nolo contendere. *Schlup*, 513 U.S. at 327. Gresham benefited from his plea of nolo contendere, yet he asks the Court to waive application of 28 U.S.C. § 2244(d) to his untimely habeas petition, to permit him to pursue frivolous claims. Because Gresham has offered no evidence to prove actual innocence, he cannot meet the exception recognized in *Perkins*. Gresham's claims are over five years late and should be dismissed with prejudice.

reality would have
be determined at the
trial. State calls into
question Court's judgment.

*State's disclosure of 15th report
was received seven years late.*

CONCLUSION

For the above reasons, the Director respectfully requests that the Court deny and dismiss Gresham's petition with prejudice as time barred. The Director further requests that no certificate of appealability issue.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JOSH RENO
Deputy Attorney General
for Criminal Justice

TOMEE M. HEINING
Acting Chief, Criminal Appeals Division

*Lead Counsel

/s/ Justine Isabelle Caedo Tan
JUSTINE ISABELLE CAEDO TAN*
Assistant Attorney General
State Bar No. 24104914

P. O. Box 12548, Capitol Station
Austin, Texas 78711
Telephone: (512) 936-1400
Facsimile: (512) 936-1280

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing pleading has been served by placing the same in the United States Mail, postage prepaid, on the 12th day of March 2025, addressed to:

Bryan Lamar Gresham
TDCJ No. 02197084
Garza East Unit
4304 Hwy 202
Beeville, TX 78102

/s/ Justine Isabelle Caedo Tan
JUSTINE ISABELLE CAEDO TAN
Assistant Attorney General

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: ROBERT BARRERA AND ROBERT ARELLANO
424 E. NUEVA SAN ANTONIO TX 78205

(b) At arraignment and plea: ROBERT BARRERA AND ROBERT ARELLANO
424 E. NUEVA, SAN ANTONIO, TX 78205

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding: SARAH DURHAM
1174 NORTH 3RD, ABILENE, TX 79601

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

THIS PETITION FALLS WITHIN THE PARAMETERS OF "ACTUAL INNOCENCE" AND IS THEREFORE EXEMPTED FROM THE STATUTE OF LIMITATIONS, AS PRESCRIBED IN McQUIGG V. PERKINS, WHERE THE SUPREME COURT RESOLVED THE ISSUE OF THE USE OF "ACTUAL INNOCENCE" IN HABEAS PETITIONS. ALSO, PURSUANT TO U.S.C. 28 SUBSECTION 2244(J)(1), THE PREDICATE FACTS, ESPECIALLY WITH RESPECTS TO GROUNDS TWO AND THREE, WERE

UNVEILED ONLY AS A RESULT OF A SUBSEQUENT WRIT FILING, WHICH LED TO AN EVIDENTIARY HEARING, REVEALING MULTIPLE PIECES OF MATERIAL FACTS THAT HAD BEEN LONG WITHHELD, DESPITE MY DOGGED DILIGENCE AND BEST ATTEMPTS TO OBTAIN ALL DISCOVERABLE FILES AND EXCULPATORY EVIDENCE, SINCE MARCH 2016 AS OUTLINED IN THE GROUNDS, THE STATE WITHHELD A REPORT THAT OFFERS A VAST POOL OF ALTERNATIVE SUSPECTS AND SHOWS A FAILED ATTEMPT TO LINK ME TO SIMILAR CRIMES. THOUGH I WAS INITIALLY ARRESTED IN MARCH 2016, AND THE REPORT WAS RELEASED IN FEBRUARY 2016, THE STATE DID NOT DISCLOSE ANY PART OF THE REPORT UNTIL MARCH 2023, ADDITIONAL PIECES OF THE REPORT WERE NOT DISCLOSED UNTIL JANUARY 2024. FURTHERMORE, RESISTING MY MOST EARNEST EFFORTS, TATIA COUNTEL DID NOT PROVIDE DETAILS, PERTAINING TO HIS KNOWLEDGE RELEVANT TO THIS CASE OR HIS ACTIONS TAKEN IN PREPARATION FOR MY DEFENSE, UNTIL MAY 21, 2024, DURING THE EVIDENTIARY HEARING. THEREFORE, THE DATE ON WHICH THE FACTUAL PREDICATE OF THE CLAIMS PRESENTED COULD HAVE BEEN DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE IS MAY 21, 2024, AND CERTAINLY NO EARLIER THAN JANUARY 2024. IN ACCORDANCE WITH USC 28 SUBSECTION 2244(D)(2), BEING THAT THE APPLICATION FOR POST-CONVICTION RELIEF WAS PROPERLY FILED ON JUNE 12, 2023, THE TIME THAT ELAPSES FROM THAT DATE TO THE DATE A JUDGEMENT WAS RENDERED SHALL NOT BE COUNTED TOWARD ANY PERIOD OF LIMITATION."

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

OVERTURN THE CONVICTION, ON THE BASIS OF THE FINDING OF ACTUAL INNOCENCE OR FIND TRUE THE CLAIMS OUTLINED IN AT LEAST ONE OF THE GROUNDS, VOID THE PLEA AGREEMENT AND ALLOW FOR A TRIAL
or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on DECEMBER 21, 2024 (month, date, year).

Executed (signed) on November 21, 2024 (date).

[Signature]

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

State Writ Application w/Brief in Support (Writ 2)

FILED
2024 9:02 AM
Clerk A. Martinez
Bexar County District Clerk
Accepted By: Andrea Ramirez

IN THE 175TH DISTRICT COURT OF BEXAR COUNTY AND
THE TEXAS COURT OF CRIMINAL APPEALS

EX PARTE

BRYAN LAMAR GRESHAM

§
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CAUSE NO. 2016-CR-11156-W2

APPLICANT'S FACTUAL SUPPLEMENT TO 11.07 WRIT OF HABEAS
CORPUS BRIEF IN SUPPORT

EVIDENTIARY HEARING REQUESTED

Submitted by:

Blizzard & Zimmerman, P.L.L.C., 1174 N. 3rd St., Abilene, Texas 79601, Tel. 325-676-1000, Fax. 325-455-8842, Sarah Durham and Jacob Blizzard for Applicant.

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**TO THE HONORABLE JUDGE OF SAID COURT AND THE HONORABLE
COURT OF CRIMINAL APPEALS OF TEXAS:**

NOW COMES, Bryan Lamar Gresham ("Applicant"), by and through his undersigned attorneys, Sarah Durham and Jacob Blizzard, and provides the following supplement consisting of factual additions to Ground 2 of his filed 11.07 application and brief in support.

**I. FACTUAL SUPPLEMENT TO GROUND 2 OF APPLICANT'S 11.07
BRIEF IN SUPPORT**

On January 25, 2024, the State filed and emailed a Notice of Retroactive Disclosures and accompanying SIA Report from January 2015 ("SIA 1"). *See* Supp. Appx. 001-004. It's formatted similarly to and is part of the same SIA Serial Rapes Investigation attached to Applicant's 11.07 Writ Application ("SIA 2"). *See* Writ App., 104-06. The State's disclosure appears to have been prepared prior to the one included in the writ application. Had Applicant known of its existence, he could have provided information to Trial Counsel or the State to further defend against his being a suspect in the Serial Rapes Investigation, specifically, in SAPD15187142.

1. Alternative Suspects

The State's recent disclosure, "SIA 1," contains Applicant's name among other suspects, as well as the specific SAPD case number associated with the offense to which Applicant ultimately pled guilty, "SAPD15187142." *See* Appx. 003. Under the "What is under review" section of that report, it reads that SAPD was "attempting

to establish a link between the individuals that have been identified by SVU (Stephen Wansley, Bryan Gresham, Lonnie Williams, and Tyrell Jones).” *Id.* Applicant was not aware that he was a named suspect in the investigation and was not aware that SAPD was trying to establish a link between him and the other listed men. Applicant denies knowing the other men. Undersigned Writ Counsel, Sarah Durham, spoke to one of the named men, Stephen Wansley, on February 9, 2024 to ask him about whether he knew, or had ever heard of Applicant. Mr. Wansley, who is serving 25 years for Aggravated Sexual Assault and Robbery committed in late 2015 and early 2016 in Bexar County, denied knowing, or even hearing about Applicant. Without any benefit to himself, he provided a letter to Writ Counsel outlining the same. *See* Appx. 005-006. The other men listed in the report, Lonnie Williams and Tyrell Jones were not located, but Applicant insists he doesn’t know either man.

2. The DNA Results

The “SIA 1” also includes a section entitled, “What SIA needs,” which states in part that SIA was “waiting on DNA results via used condoms recovered from SAPD1524887 and SAPD15187142.” As explained in Applicant’s 11.07 brief in support, Applicant was excluded as a DNA contributor on all samples tested in that case. *See* App. Brief in Support, 7-9.

3. No Implication in Associated Cases

The "SIA 1" states, as does "SIA 2" that SAPD was investigating 81 Hotel/Motel Sexual Assaults and 162 Robberies that occurred in 2015. Applicant was a suspect in *one* of those cases, yet "SIA 1" notes that SAPD16017941, a case involving a Black male and one or two Latino males possibly fit the m.o. on SAPD15187142—the case in which Applicant ended up being a suspect. They were characterized by SAPD as "serial" robberies and rapes, so it stands to reason that the same suspects would be involved in multiple of the assaults and robberies. Yet, Applicant never faced charges on *any* other of the 81 sexual assaults or 162 robberies.

II. CONCLUSION

Applicant requests and prays that the court consider the above factual supplement to Ground 2 of Applicant's filed Amended 11.07 application and brief in support, and after consideration of all arguments and authorities, the Trial Court will set this matter for an evidentiary hearing to receive evidence on Applicant's grounds and enter findings of fact and conclusions of law recommending habeas relief in the form of a new trial.

Further, Applicant requests and prays that after considering Applicant's application and brief in support, along with the aforementioned items, the Court of

Criminal Appeals will enter an order vacating Applicant's conviction, remanding for new trial, and/or any other relief to which Applicant is entitled.

Respectfully submitted,

Blizzard & Zimmerman, P.L.L.C.
1174 N. 3rd St.
Abilene, TX 79601
Tel: (325) 676-1000
Fax: (325) 455-8842

By: /s/ Sarah Durham

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By: /s/ Jacob Blizzard

Jacob Blizzard
State Bar No. 24068558
jacob.blizzard@blizzardlawfirm.com

**Attorneys for Applicant,
Bryan Lamar Gresham**

CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of Tex. R. App. P. 73 because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Rule 72, because it contains 677 words.

/s/ Sarah Durham

Sarah Durham

SUPPLEMENTAL APPENDIX

CAUSE NO. 2016CR11165-W2

EX PARTE	*	IN THE DISTRICT COURT
BRYAN GRESHAM	*	175TH JUDICIAL DISTRICT
APPLICANT	*	BEXAR COUNTY, TEXAS

STATE'S NOTICE OF RETROACTIVE DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the State of Texas by and through its Criminal District Attorney, Joe D. Gonzales, and files this State's Notice of Retroactive Disclosures.

- SAPD SIA Report from 1/27/15

The associated report will be made available to Bryan Gresham through attorney of record, Sarah Durham. The State in no way concedes the materiality or evidentiary admissibility of the matters disclosed. Additionally, any information received from the State shall not be disclosed to any third party except as allowed for under Article 39.14(e).

Respectfully submitted,

JOE D. GONZALES
Criminal District Attorney
Bexar County, Texas

LZ

LAUREN D. ZAMORA
Assistant Criminal District Attorney
Bexar County, Texas
101 W. Nueva
San Antonio, Texas 78205
SBN: 24039724

(210) 335-3794
(210) 335-2436-FAX

Attorneys for the State

CERTIFICATE OF SERVICE

I, Lauren D. Zamora, Assistant Criminal District Attorney, Bexar County, Texas, certify that a true and correct copy of the foregoing response will be served via e-filing to Sarah Durham on this the 25th day of January 2024.

L/Z

LAUREN D. ZAMORA

**Additional material
from this filing is
available in the
Clerk's Office.**