Into The United States ConstitutionAL Court
Of The Texas Court Of Criminal Appeals And
Its Justices,Supreme Court Building,201 -
West 14th Street,room 106,Austin Texas 78711

53,692-04

RECEIVED IN
COURT OF CRIMINAL APPEALS
JUL 13 2015
Abel Acosta, Clerk

Delivence,Andre Sims,Pro Se,
Applicant-Relator
Versus,
Eddie D.Baker;Intruders:
Joshua Vincent-Intern(unkonwn FOR what)
Andrew J.Smith(or co-signer),as Assist,
District Attorney to Harris County,Texas,
John/Jane Doe judge presiding,351st Dist-
rict Court to/for Harris County,Texas,
Respondent(s)/Intruder(s)

Civil Action Nu:

Inre:Tr.Ct.Rd.#765557;
Pleading for a writ of mandamus
And Complusory Counter-Claim

Applicant's Pleading For A Writ Of Mandamus,and His Complusory Counter-Claim Against Illegal Third Party Intervener(s) With Its OR Their Illegal-Improper Motion Practice In said Case Sub Judice

TO The Texas Court Of Criminal Appeals and its Justices,Respondent(s) and Illegal Party Interveners;

Let there be Understanding,comes now,One,Sims Andre Delivence,**Applicant/Relator** herein after in Pro Se capacity,and in the above styled,Caption,and Numbered Cause of action,Case,and in this proceedings,brings [t]his Application for a Writ-of Mandamus,along with his necessary Complusory Counter Claim(s) motion against-third Party interveners,and will herein too invoke this Texas Court of Criminal-Appeals Jurisdiction to proscribed State(as well as federal)law,and compel said laws to be applied against an intruder judge,with an undecipherable and unident-ifiable name,acting clearly outside if its jurisdiction over this said above case and cause of action,pursuant to Texas Government Code,§ 22.221(b),along with-Rule 72.1,and 72.2 of the Texas Rules of Appellate Procedure,for said intruding judge,not appearing for verified authenticated judgementship in compliance with the Texas Constitution and Statutory law,and thereafter,abusing its judicial authority,by failing to correct its usurpation of authority over the subject-matter cause under number 765557,and then to make matters more wrose,intentionally - failed to perform its **ministerial** duties to have ackonledged its basis of its - own original competent jurisdiction over said cause,and on its own motion of necessity,as obligatory dutites emplaced bt State of Texas law,and for such other - reasons in this proceedings sub judice,and thus,Relator files [t]his application for the issuance of a writ of mandamus directing the intruding(john/jane doe)judge to recuse its self from said cause of action under number 765557,and recall - its illegal adoption of **Joshua Vincent's and Andrew J.Smiths** illegal proposed motion practice,and baseless proposed brief,as "STATE'S ORGINAL ANSWER" -signed by Andrew J.Smith on June 17th,2015,"in for this case at bar...Inwhich relator was convicted unlawfully in said trail Court for murder.Inmore emphasis of this want of mandamus application,Relator will state to this said Court the following:

I

A) On an unknown data the Prosecuting Attorney for cause number 765557,forged and-fraudulently issued an indictment, hile never impaneling a grand jury panel to - have returned a legitimate and valid indictment or True Bills of Indictment,as a matter of law and justice performed in Harris County Texas.Hence,no Harris County was empaneled to conveye and investigate the surrounding circumstances of said Cause indispute sub judice,and thereby,no grand jury under the laws of Texas charged this Relator with the offense of some imprecise and unspecific murder,as a non-Capital offense(as cited in Relator's memorandum petition/application for a writ of habeas corpus).Relator states not only were there other defendants convicted for that same offense,as the principal culprit(s),but it was there in-that trial Court that the judge had a duty to read the alleged indictment's contents for obtaining legal jurisdiction.e.g.,**State V.Chatman**,671 F.2d 531,538(KA-N.1983);**Garcia V.Dial**,596 S.W.2d 524,528(Tex.Cr.App.1980);**Cook V.State**,902 S.W.-471,476,n.6-7(Tex.Cr.App.1995),id.at 475,& at n.4-5....

Fatally Defective Process of Service:

B) The underlying proceeding involves action out side of the scope of law and inaction by the trial Court,judge,as it also fails to issue the writ of habeas-corpus to the proper and legal person holding your Relator unlawfully and illeg- against his will and restrained of his liberty,pursuant to Articles 11.01,-11.02,11.03,11.04,11.05,11.10,11.11,11.12,11.13,11.14(1) to (5),11.15,11.16(Texas Code of criminal Procedure)[for the purpose of invoking Art.11.07,§§ 1,& 3(a)-(b);4(a)(1),(2),& (b),& (c); § 5 et seq(TCCP)];**Texas** Rules of Civil Procedure,-Rules 106 & 21a;**Hamdi V.Rumsfeld**,542 U.S.507,124 S.Ct.2633,159 L.Ed.2d 578(2004); **Rumsfeld V.Padilla**,524 U.S.426,124.S.Ct.2711,159 L.Ed.2d 513(2004) 8;**Rasual V.-Bush**,542 U.S.466,124 S.Ct.2686,159 L.Ed.2d 548(2004),9;**U.S.V.Moussaoui**,365 F.3d 292,300-02,n.4-5(4th Cir.2004)(case law cited);Cf.**Baker V.Monsanto**,111 S.W.3d -158,161(Tex.2003)(citation in original).This civil action was filed against the warden of the Michael Prison Unit,as indicated in Relator's memorandum of law,-attached to his application for writ of habeas corpus.**Eddie** D.Baker(or successor in place)is the warden and the proper legal Respondent to have been served. with respect to the writ of habeas corpus petition,and thus,was supposed to be - the **Person** who has custody over this Relator-Applicant,and jurisdiction of the issuance of writ thus lies with this Texas Court of Criminal Appeals justices-over this case,and cause of action,and parties of interest,as Respondent **Baker**-named **in the habeas corpus petition**.Ibid.

C) "The third party intervener(s) never give Relator notice they were intervening with or without State Court authority-in this case at bar,against him,for what ever unfounded reasons alleged in their baseless and illegal motion practice,& - thus,Relator never got his opportunity to contend against such unlawful interv-ention,and that includes,Relator being deprived to timely file any motions for otice to Include and Augment the record for his motion to quash [void] indictm-ent,with his challenge to the trail Court's intruding judge's odoption of illegally obtained extrinsic third Part's evidence,"as if TITLED:"...PROPOSED FINDINGS OF FACT,CONCLUSIONS OF LAW.Id.See Page 1 of 4 and page 2 to 4.Hence,those proposed false findings are conclusionary allegations,because the trial Court's [habeas] judge or intruder never conducted proceedings as under 11.07,3(c),nor as would have been held under3(d)(TCCP),and totally disregarded Relator's claim-(s) that fall under Art.11.07,§ 4(a)(1) ans (2),& (b),& (c)-these are provision-(s) Relator relied on in support of his submitted and enumerated exhibitation - submitted with his habeas writ in chief.In plain langauge,Relator's claim here-in too,involves the State Court's Prosecutor/Government's agents perpetrating-a fraud upon the Courts-during the collateral review proceedings.**U.S.V.Winest-ock**,340 F.3d 200,207,n.7(4th Cir.2004),citing **Dunn V.Cockrell**,302 F.3d 491,492-n.1(5th Cir.2003)(other cases);**Ryland V.Shapiro**,708 F.2d 967,972,n.5(5th Cir.1983),among other precedent cases upon shepperdizing these citions.But the fact - that due process affords a habeas corpus Petitioner the[his]right to a fair opp-ortunity in State Court to discover and present potential exclupatory evidence-that was not contained in the record on direct apppeal.e.g.,**District Attorney-**

Office V.Osborn,557 U.S.52(2009)(citation in original).Thus,Andrew Smith's interference with Applicant's/Relator's want of habeas corpus proceedings,is an unlawful impediment,and Baker has not yet been served the writ to deliver-Relator's body in Court and address this question of a liberty interest,under claims of fraudulent indictment.But these issues involve a State fact developement that has not taken place yet,combined with practically non-existent fact-developement procedure on the habeas corpus proposed...Which automatically,amounts to an unconstitutional "Suspension" of the Writ.e.g.,Boumedine V.Bush,533 U.S.723(2008).Therefore,Relator has no other adquate remedy at law,to correct - this issue of fraud-upon-the-Courts by said intruders and inactions bythe trial Court and it's habeas corpus judge assigned to this Case sub judice.Which means the act sought to be compelled is purely ministerial in nature.The Law guarantees that every Petitioner/PrisonerRelator has a clear right to the relief sought by him.And as his memorandum of law shows,his claim'(s) merits are grounded and rooted on United States Constitutional Voilations,of his Civil Rights - amoung many Texas State laws violated by the Prosecution team.Hence,the merits of relief are beyond dispute.Which means Relator meets the requirements of legal right that neccessitates that the law plainly decribe the duty to be performed,such that there is no room for discretion.e.g.,Deleon V.District Clerk, 187 S.W.3d 473,474-75,n.1,3,4,5(Tex.Cr.App.2006).

Wherefore Premises Duly considered,for all the above reasons and for any other reasons shown in the trial Court's record or on hearing under de novo,and - on the further testimony,evidence anticipated to be adduced on said evidentiary evidentiary inconnection with Relator's want of writ of mandamus,with his Compulsary Counter-Claim insupport of relief from such unlawful intervention by - said interveners.This Court of Criminal Appeals of Texas,has jurisdiction to issue the Writ of mandamus in this cause,pursuant to Article 5,§5A of the Texas - Constitution,and Article 4.04(TCCP),directing the trial Court and its Judge to file all additional attached documentation to the application for a writ of habeas corpus,as contemporaneously submitted by Relator,as well as all his exhibits entered,and must be part of the habeas corpus record in chief.Then,this said Court's justices can strike the illegal third Party's ilegal motion-brief - filed,as baseless and illegal extrinsic facts or misstatement of fact.In the Interest of justice,may this Court's justices declear Relator is entitled to the - writ of mandamus directing the trial judge or and intruder,to set aside its Order of June 22nd,2015,in cause number 765557,and to dismiss the cause for non-Valid charging instrument,and any other relief this Court's justices find deemed.

Executed on 8 this day of July 2015,

Repectfully submitted Delivence Sims

Anrew Delivence Sims
(00833100;2664 F.M.2054
Mark Wayne Michael Unit
Tennessee Colony,Texas 75886

Affidavit Prosed Above/Certificate of Service

I, Delivence Sims, TDCJ# 833100, am precesently illegally, and unlawfully incarcerated,restrained and confind of My liberty at the Mark W. Michael Prison Unit,located in Anderson County,Texas,at 2664 F.M.2054,Tennessee Colony,Texas 75886 and I declare under penalty of perjry,that I have sent the trial Court(intruders)a copy of my mandamus and counter-claim on this 8 day of July, 2015,pursuant to,§§ 132.001-132.003,of Title 6,Texas Civil Practice & Remedies Code,

Affiant/Relator Pro Se

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