212 EX PARTE

WRIT NO W07-48164-V(A)

75,594

IN THE 292ND JUDICIAL DISTRICT COURT DALLAS COUNTY TX

FILED

2015 DEC -3 PM 4:13

FELICIA PITRE
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

JEREMIAH D. PHILLIPS

RECEIVED IN
COURT OF CRIMINAL APPEALS

DEC 17 2015

Abel Acosta, Clerk

MOTION FOR LEAVE TO FILE WRIT OF MANDAMUS

This document contains some pages that are of poor quality at the time of imaging.

TO THE HONORABLE JUDGE OF THE COURT OF CRIMINAL APPEALS:

NOW COMES JEREMIAH D. PHILLIPS TDCJ NO: 1512530, PRO SE SEEKS LEAVE IN ORDER TO BE ALLOWED TO FILE HIS ORIGINAL WRIT OF MANDAMUS IN THE ABOVE NUMBERED AND STYLED CAUSE AND WOULD SHOW THE HONORABLE COURT THE FOLLOWING IN SUPPORT THEREOF, RESPECTFULLY.

I

HONORABLE FELICIA PITRE, CLERK OF THE ABOVE NUMBERED DISTRICT COURT, IS THE RESPONDENT IN THIS WRIT OF MANDAMUS. MOVANT RESPECTFULLY MOVES TO HAVE THIS CONSIDERED CUMULATIVELY IN THE MANNER PRESENTED. THIS IS DUE TO MOVANT'S INDIGENT STATUS AND INABILITY TO OBTAIN COPIES AND THE ECONOMY OF THE COURT.

II

MOVANT WAS REPRESENTED BY CALVIN JOHNSON AT TRIAL AND DIANNE KATHYRN JONES ON APPEAL(DIRECT). MOVANT'S ABILITY TO PAY COURT COSTS AND FILING FEES HAS CHANGED AND CAN NO LONGER DO SO.

III

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DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

THE WRIT OF MANDAMUS ATTACHED IS FOR GOOD CAUSE AND NOT MEANT FOR DELAY. APPLICANT HAS NO OTHER ADEQUATE REMEDY AT LAW.

INMATE DECLARATION

I JEREMIAH D. PHILLIPS #1512530 PRO SE BEING CURRENTLY INCARCERATED IN TEXAS DEPT. CRIMINAL JUSTICE MICHAEL UNIT 2664 FM 2054 TENNESSEE COLONY, TX 75886. I DO HEARBY SWEAR UNDER THE PENALTY OF PERJURY, THAT THE FACTS STATED ABOVE ARE TRUE AND CORRECT TO THE BEST OF MY BELIEF

Jeremiah Phillips #1512530

CERTIFICATE OF SERVICE

BY MY SIGNATURE BELOW AND ADDRESS LISTED BELOW I DO HEARBY CERTIFY, THAT A TRUE & CORRECT COPY THE ABOVE AND FORGOING DOCUMENT WAS SENT BY U.S. MAIL TO THE LISTED ADDRESS, ON THIS THE 23 DAY OF NOVEMBER 2015.

FELICIA PETRE DISTRICT CLERK
2ND FLOOR FRANK CROWLEY COURT BLDG
113 N. RIVERFRONT BLVD LB12
DALLAS, TX 75207-4399

Jeremiah Phillips
JEREMIAH D. PHILLIPS 1512530
2664 FM 2054 MICHAEL UNIT
TENNESSEE COLONY, TX 75886

JEREMIAH DESHEAN PHILLIPS
RELATOR PRO SE
JUDGE LARRY MITCHELL
DALLAS COUNTY TEXAS
RESPONDANT

WRIT NO.
W07-48164-V(A)

IN THE 292ND
JUDICIAL DISTRICT
COURT
DALLAS COUNTY, TX

FILED
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PLAINTIFF'S ORIGINAL APPLICATION
FOR WRIT OF MANDAMUS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW, COMES JEREMIAH DESHEAN PHILLIPS, RELATOR PRO SE, IN THE ABOVE STYLED AND NUMBERED CAUSE OF ACTION AND FILES THIS ORIGINAL APPLICATION FOR WRIT OF MANDAMUS PURSUANT TO THE DESIGNATED ISSUES ORDERED BY JUDGE LARRY MITCHELL AND CHRISTINE WOMBLE ASSISTANT DISTRICT ATTORNEY OF SAID COURT ON OR ABOUT NOVEMBER 24, 2010 AND WOULD SHOW THE COURT THE FOLLOWING

I

RELATOR, JEREMIAH D. PHILLIPS #1512530 IS AN OFFENDER INCARCERATED IN THE TEXAS DEPT. OF CRIMINAL JUSTICE AND APPEARING PRO SE AND BE LOCATED AT THE MICHAEL UNIT 2664 FM 2054 IN THE TENNESSEE COLONY, TX 75886.

II

RELATOR HAS BEEN WAITING FOR AN ANSWER TO THE DESIGNATED ISSUES FOR OVER 5 1/2 YEARS, PLUS THE COURT OF CRIMINAL APPEALS HAS STOPPED ALL ACTIONS AND RULINGS ON THE RELATOR 11.07 APPLICATION WITHOUT THE ISSUES RELATOR CANNOT PROCEED INTO THE NEXT STEP OF APPEAL. THE COURT ORDERED BY LARRY MITCHELL THAT THESE DESIGNATED ISSUE BE SENT TO THE APPLICANT. THE ISSUES WERE FILED ON NOVEMBER 24, 2010 THESE FINDINGS FACTS AND CONCLUSIONS HAVE NOT BEEN SENT IN A TIMELY FASHION WHERE APPLICANT COULD OBJECT OR FILE HIS 2254. SEE EXIBIT (A)

III

THE COURT FOUND THAT EACH OF THE ALLEGATIONS

SET FORTH IN THE RELATOR 11.07 APPLICATION WERE CONTROVERTED AND UNRESOLVED FACTUAL ISSUES WHICH REQUIRED ADDITIONAL EVIDENCE AND/OR TESTIMONY TO BE RESOLVED.

IV

THE RELATOR THROUGH HIS 11.07 APPLICATION HAS SHOWN THE COURT THAT UNRESOLVED FACTUAL ISSUES, DO EXIST. THE COURT OF CRIMINAL APPEAL ARE REQUIRED TO REVIEW EVERY ARGUMENT RAISED BY A PARTY THAT IS NECESSARY TO THE DISPOSITION OF THAT APPEAL LIGHT V. STATE 15 S.W. 3D 104.105 (TEX CRIM APP 2000)

CONCLUSION

RESPONDANT THE HONORABLE LARRY MITCHELL IN HIS CAPACITY AS DISTRICT JUDGE OF DALLAS COUNTY TEXAS HAS A DUTY TO ORDER A HEARING DATE. HOW CAN IT BE SAID THAT THE COURTS HELD A FULL AND FAIR HEARING IN REACHING ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW WITHOUT ALLOWING APPLICANT TO PARTICIPATE IN THE HEARING? THE APPLICANT CANNOT GO AHEAD WITH HIS 2254 BECAUSE THE CLERK OF THE COURT HAS NOT SENT THESE ISSUES WHERE APPLICANT CAN FILE HIS 2254 EFFECTIVILY.

THE RELATOR HAS A FUNDAMENTAL RIGHT TO DUE PROCESS AND HIS CONSTITUTIONAL RIGHT TO EFFECTIVE COUNSEL WAS VIOLATED. THE 5th AND 14th AMENDMENT SAYS COURT CANNOT DEPRIVE RELATOR OF LIFE, LIBERTY, OR PROPERTY WITHOUT PROCEDURES OR DUE PROCESS AND AND BY THE JUDGE IN SAID COURT HAVING NOT THESE DESIGNATED ISSUES RESOLVED THIS IS A VIOLATION OF MY CONSTITUTIONAL RIGHT TO DUE PROCESS.

RESPECTFULLY

Jeremiah Phillips

JEREMIAH DESHEAN PHILLIPS

TDCJ # 151230

PRAYER

WHEREFORE, RELATOR, RESPECTFULLY PRAYS THIS HONORABLE COURT GRANT MANDAMUS RELIEF AND ORDER THE CRIMINAL DISTRICT COURT CLERK TO IMMEDIATELY TRANSMIT THE WRIT APPLICATIONS TO THIS COURT IN ACCORDANCE WITH THE RULE. ALTERNATIVELY, RELATOR PRAYS FOR ANY OTHER RELIEF HE MAY BE ENTITLED TO IN LAW OR EQUITY, RESPECTFULLY.

INMATE DECLARATION

I JEREMIAH D. PHILLIPS, #1512530 PRO SE BEING CURRENTLY INCARCERATED IN TEXAS DEPT. OF CRIMINAL JUSTICE MICHAEL UNIT 2664 FM 2054 TENNESSEE COLONY, TX 75886. I DO HEARBY SWEAR UNDER THE PENALTY OF PERJURY, THAT THE FACTS STATED ABOVE ARE TRUE AND CORRECT TO THE BEST OF MY BELIEF

Jeremiah Phillips

CERTIFICATE OF SERVICE

BY MY SIGNATURE BELOW AND ADDRESS LISTED BELOW, I DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY THE ABOVE AND FORGOING DOCUMENT WAS SENT BY REGULAR U.S MAIL TO THE LISTED ADDRESS, ON THIS THE 23 DAY OF NOVEMBER 2015

FELICIA PITRE DISTRICT CLERK
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Jeremiah Phillips
JEREMIAH D. PHILLIPS 1512530
2664 FM 2054 MICHAEL UNIT
TENNESSEE COLONY, TX 75886

EXIBIT (A)

FILED

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WRIT NO. W07-48164-V(A)

2010 NOV 24 PM 2:54

EX PARTE	§	IN THE 292nd JUDICIAL DISTRICT
	§	DISTRICT COURT
JEREMIAH DESHEAN PHILLIPS	§	DALLAS COUNTY, TEXAS

DISTRICT CLERK DALLAS CO., TEXAS DEPUTY

STATE'S PROPOSED ORDER DESIGNATING ISSUES

Having considered Applicant's Application for Writ of Habeas Corpus and the State's Response, the Court finds that controverted, previously unresolved facts material to the legality of Applicant's confinement exist. The Court finds that each of the allegations set forth in the application are controverted, unresolved factual issues, which require additional evidence and/or testimony to be resolved.

The Court appoints Bruce Anton to resolve the issues and prepare findings of fact and conclusions of law for the Court. The issues may be resolved by affidavits, depositions, interrogatories, or by hearings as deemed necessary by the person appointed herein.

Above appointed attorney does not represent the Applicant. Applicant is not entitled to counsel at this time.

The Clerk of the Court is ORDERED to send a copy of this order to Applicant, or Applicant's counsel (if so represented) and to counsel for the State by depositing the same in the United States mail.

Signed _____, 2010.

_____

Judge Larry Mitchell
292nd Judicial District Court
Dallas County, Texas

D

Respectfully submitted,

Craig Watkins
Criminal District Attorney
Dallas County, Texas

Christine Womble
Assistant District Attorney
State Bar No. 24035991
Frank Crowley Courts Building
133 N. Riverfront Blvd., LB-19
Dallas, Texas 75207-4399
(214) 653-3625
(214) 653-3643 *(fax)*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing response was served on Applicant, Jeremiah Deshean Phillips, #1512530, Beto Unit, P.O. Box 128, Tennessee Colony, Texas, 75880, by depositing same in the United States mail, postage prepaid, on November 24, 2010.

I further certify that a true copy of the foregoing was served on Bruce Anton, writ master, Sorrels, Udashen & Anton, 2311 Cedar Springs Road, Suite 250, Dallas, Texas, 75201, by [redacted] and United States mail, postage prepaid, on November 24, 2010.

Christine Womble