70,398-12

RECEIVED IN
COURT OF CRIMINAL APPEALS

DEC 18 2015

Abel Acosta, Clerk

Clerk, Court of Criminal Appeals
P.O. Box 12308
Capitol Station
Austin, Texas 78711

RE: Ex parte Johnson v State, WR-70,398-12

Dear Clerk,

Enclosed, please find Mr. Johnson's Original Reply Brief w/ Exhibits to be duly filed on the appeals Court docket upon receipt by this office.

Also, would you please certify and mail the State a Copy of this reply brief as petitioner is incarcerated and indigent.

Additionally, please return mail a file/date Stamp Cover Sheet reflecting the docketing of this reply brief on the Courts docket at your earliest Convenience.

Thanking you for your assistance in this matter

New Adress

S/ Anthony Johnson #2007468

Anthony Johnson #2007468
Bradshaw State Jail
P.O. Box 9000
Henderson, Tx 75653-9000

WRIT No WR-70,398-12

EXPARTE Johnson	§	CRIMINAL COURT OF
Vs.	§	APPEALS OF TEXAS,
STATE OF TEXAS	§	AUSTIN, TEXAS

PETITIONERS REPLY TO STATES RESPONSE

Now into Court comes, Anthony Deshawn Johnson herein after referred to as Petitioner, and Respectfully Presents his Reply brief to the State's response in the above Application for Writ of habeas Corpus now before the Court for the following reasons to wit's

STATEMENT OF FACTS

Petitioner was originally arrested and Charged with violation of Penal Code 38.04(b)(2)(b). Evading arrest/detention w/vehicle, a state jail felony offense in the County of Dallas, Texas.

Thereafter defense Counsel and the Prosecutor reached a "plea agreement" to a "Misdemeanor reduction" from evading arrest w/vehicle, to Attempt Evading arrest, A Class "A" misdemeanor offense. [Reference Exhibits 1-A; 2B' 3-C] incorporated by reference and made a part of the record herein.

However, the Judgment - Committment Order in this case reflect that although the petitioner pled to an agreed written plea agreement to the reduced charge, the primary offense of evading arrest/detention w/ vehicle or watercraft was entered into the (Order) and a State Jail Sentence of two [2] years confinement was imposed. [Reference; Exhibits 1A, 2B, 3C]

Petitioner filed his original application for writ of habeas corpus w/ attached memorandum of law which was forwarded to this Court and duly filed on 11/19/2005 WR-70,398-02.

The State filed its response to Petitioner's Article 11.07 Application for Writ of habeas corpus contending that; (a. Petitioner has failed to establish that a due process violation of law has occured from the evidence contained and presented in Petitioner's Application, and; (b. that this Application for Writ of habeas corpus is premature and not cognizable where an Order of Mandate has not been issued finalizing the direct appeal process in this case.

In Petitioner's reply brief herein, it is submitted that both the State's Arguments raised in its response are frivilous and without merit.

ARGUMENT & AUTHORITIES

1. Petitioner's Article 11.07 Application For Writ of Habeas Corpus Is Not Premature Nor Barred For Want of Jurisdiction.

In the State's response, the Respondent Contends that Petitioner's direct appeal was not finalized and an Order of Mandate had not issued, thus, barring post conviction review on an Application for Writ of Habeas Corpus.

Petitioner maintains the position herein that the Appellate Court "refused" Petitioner's issue on direct appeal, and that although notice of appeal was filed with the trial court, a brief arguing on direct appeal was never filed with the appellate Court, and the appellate Court procedurally barred Petitioner from appealing the conviction and Sentence based on his guilty plea and waiver of his right to an appeal in the case.

Therefor, the appeal process was never allowed and an Order of Mandate is not appropriate nor required to establish a final conviction for purpose of filing a post conviction application under Article 11.07 of the Texas Code Crim. Proc. in this case.

Petitioner's Application for Writ of Habeas Corpus Currently before this Court is Proper and timely Filed in accordance with applicable law.

2. Petitioner's Conviction And Sentence for Violation of Texas Penal Code 38.04 (b)(2)(b) Is Illegal And A Breach of The Written Plea Agreement Between The Prosecutor and The Defendant In This Case In Violation of Due Process of Law.

In the State's response, the Respondent Contends that Petitioner's Conviction and Sentence Pursuant to Texas Penal Code 38.04 (b)(1)(b) as originally Charged is not illegal nor a breach of the written plea agreement.

Petitioner assarts, the record in this Case Clearly establishes that he was originally Charged with Violation of 38.04 (b)(1)(B) Evading Arrest Detention w/ Vehicle or Watercraft, a State Jail Felony Grade offense. [Reference Exhibit 1-D].

Thereafter, the State and defense Counsel in this Case reached a plea agreement to a misdemeanor reduction of Attempted Evading Arrest, a Class "A" Misdemeanor Carrying a maximum penalty of one (1) year County Jail time.

[Reference Exhibit 1-B]

However, subsequent to the consummation of the written plea agreement between the State and the Petitioner, the trial court entered a Judgement for Conviction of the original charge of Evading Arrest / Detention w/ Vehicle or Watercraft, 38.04 (b)(1)(B), and Sentenced petitioner to two (2) years State Jail Confinement.

[Reference Exhibit 1-D]

Unquestionably, the Conviction and Sentence imposed for Violation of 38.04 (b)(1)(B), a State Jail felony grade of Sense with a maximum imposition of a two [2] year sentence of Confinement by the trial Court is a direct breach of the written plea agreement Consummated between the State and the petitioner in this case, and Squarely violates the Provisions of Due Process of law under the Fifth and Fourteenth Amendments of the United States Constitution, U.S.C.A. #5, #14

This is a patent error Clearly established on the face of the record where the written plea agreement binds the State to Conviction and Sentence for the reduced offense of Attempted Evading

Arrest, by and through a Misdemeanor Reduction, a Class "A" Misdemeanor Carrying a Maximum Sentence of one (1) year County Jail Confinement. [Reference, Exhibits 1-B & 1-D]

A review of the (Judgment and Commitment Order) in this case further establishes that the Conviction and Sentence in this case is Illegal and in Violation of the written plea Agreement between the State and the Petitioner in this Case.

Further, VTCA Penal Code § 15.01 (a)(d) provides that an "attempt" of any Criminal offense is reduced to a Class "A" Misdemeanor from the primary Criminal offense-Charged

In Conclusion, Petitioner Submits that the record is Clear, a breach of the written plea agreement has occurred, and Conviction and Sentence has been Adjudicated by the trial Court breaching the Written plea agreement in this case between the State and Petitioner and Cannot stand. A Core Violation of Petitioner's Statutorial and Constitutional Right to Due Process of Law has occurred. U.S.C.A. #5, #14.

Conclusion And Prayer

Wherefore, Premises Considered, Petitioner Prays this Court Enter an Order to Vacate the Conviction and Sentence imposed by the trial Court, and remand the Case back to the trial Court Ordering Conformance to the terms of the Written Plea Agreement Agreed to by the State and Petitioner in this Case.

Respectfully Submitted,
Anthony D Johnson
TDCJ# 2007468
P.O. Box 9000
Henderson, Tx 75653-9000

Inmate Declaration

I Anthony Deshawn Johnson, # 2007468 does declare and State that the foregoing Reply to the States Response is true and correct under perjury Article § 1746 U.S.A.C.
Affix my Hand this 14th day of Dec, 2015
/s/ Anthony D Johnson #2007468

Certificate of Service

On this 14th day of Dec, 2015 I Anthony D Johnson has Placed this Reply to the States Response in the U.S. Postal Address to Clerk Court of Criminal Appeals P.O. Box 12308 Capitol Station Austin, Texas 78711. /s/ Anthony D Johnson #2007468

[EXHIBIT 1-D]

Current BookIn No: 15010510 - Kays Tower / KT 02-B • IN COUNTY JAIL

Adult Identification Information



Date: 2/23/2015
Photos(8)

AIS Number	DPS/SID Number	LAI Number	FBI Number
2086896	04372164	659269	
True Last Name	**Suffix**	**True First Name**	**Middle Name**
JOHNSON	0	ANTHONY	DESHAUN
Date of Birth	**Current Age**	**Height**	**Weight**
11/26/1971	43	5' 11"	210 lb
Photo	**Fingerprints**	**In Dallas Jail Before**	**Native Language**
Available	Unavailable	YES	
Race	**Sex**	**Ethnicity**	**Skin Tone**
Black	Male	Non Hispanic	Dark

Court History | Assign Attorney | Jail Messages | Warrants

Court History

Filing Agency
Dallas Police

Court No.
CDC2

Court Name
Criminal District Court No. 2 (FI)

Case No.
F1552344

DA Accepted Date
3/12/2015

File Date
2/26/2015

Mental Health Patient
Y

Judicial Information

Offense Description
EVADING ARREST DET W/VEH

Statute Citation
PC / 38.04(b)(2)(A)

Offense Code
48010020

Typ/CL
F3

GOC
N/A

Misdemeanor Reduction
ATT EVADE ARREST FS
4801002001

Final Plea
G

Court Disposition
PGBC - Agreed plea of guilty before court.

No

Disposition Date
7/8/2015

Reason for Dismissal
N/A

Chg No.	Primary	Offense Description	DPS Code	Statute Citation	L/D	OffenseDT	TRN No	TRS No	Warrant No.	Dom./Fam. Vio.	Disposition	Need To Magistrate	Delete
1		EVADING ARREST DETENTION W/VEH OR WATERCRAFT	48010016	38.04(b)(1)(B) PC	FS	02/22/2015	9176835405	A001	F1552344	No	State Jail	☑	Release ☐ Yes
2		DRIVING WHILE INTOXICATED 2ND	54040010	49.09 (A) PC	MA	02/22/2015	9176835405	A002	M1552890B	No	Time Served	☑	Release ☐ Yes

Magistration Le

AUTH/ SHERIFF ... 02/26/15 M RODRIGUEZ
CHG F1552344 PGBC SJ BT 022215-070815 PER DISPO TORRES/SMHURD 070815
CHG M1552890 DEFT RECD 142 DYS CRDT 60 DYS GT T F CC RUN CC AS OF 071315 BMCLEMORE#