46,194-10

ND 007-81669-97-G
WR:No 46.194-10

RECEIVED IN
COURT OF CRIMINAL APPEALS

JUN 14 2016

Abel Acosta, Clerk

Ex parte Caldwell. Robert
Applicant / Appellant

vs.

The State of Texas

In The
Court of
Criminal Appeals

MOTION FOR LEAVE TO SEEK out of time REVIEW
AND
MOTION FOR LEAVE TO File paper Exceeding 25 sheets

TO THE Honorable Judge of said Court of Criminal Appeals

Comes now Robert J. Caldwell within the comity of this Honorable Court of Criminal Appeals Judges moves this Honorable Court to review of out of time review for this Honorable Court to fashion habeas relief. This Honorable Court of Criminal Appeals issue a writ card on 10-29-2014 the denial without written order or even without determing whether:

(a) if any due process of law was due, and if some was violated.
(b) the newly discovery evidence was material and if have would this evidence bring a different result upon another trial for this reason that Robert J. Caldwell seeks and out of time review.

MOTION FOR LEAVE to file paper Exceeding 25 pages

Robert J. Caldwell present his affidavit involving his constitutional rights of an out of time review for the High Courts of Criminal Appeals to necessary power to grant relief. It was so necessary to throughout presented a cognizable habeas corpus, decline the the application file.

III. the affidavit is attach to this Motion.

This case was never close cause Art 11.07 §3d authorized Judge Kerry L. Russell to file a finding of facts and conclusion of law. or to approve attorney Michael J. West to filed finding of facts and conclusion of law.

Neither Judge or approve attorney (state) has accomplish to file a finding of facts and conclusion of law under cause no 007-81669-97G. Futher more art 11.07 §5 authorized for this Honorable Court of Criminal Appeal to review the records for reason Robert F. Caldwell presented his Article V§5 Affidavit in breif form that did this reason he represent his claim for relief.

Submission

Submission will set upon agreement of these judge(s) and by his pleading, notice of submission have been provided.

Wherefore Robert F. Caldwell request this Honorable Court of Criminal Appeals to grant permission for out of time review of his habeas claim and file an Art V§5 Affidavit in the form of a breif for this Honorable Court of Criminal Appeals to fashion relief sought.

Respectfully Submitted

Robert F. Caldwell
Applicant-pro-se

Unsworn Declaration

I Robert F. Caldwell #933046 TDCJID being confine within the walls of Polunsky Unit declare under the penalty of perjury that the foregoing Motion is true and correct to the best of my ability.

Duly Submitted
Robert F. Caldwell
Applicant - Prose

Certification of Service

I declare that a true and correct copy of Robert F Caldwell, Motion For Leave To Seek Out of Time Review and Motion For Leave To File Paper Exceeding 25 sheets was served upon the Honorable Judge Kerry L. Russell and to the address of 100 N. Broadway Tyler, Texas 75701 by the way of U.S. Mail on this the 6th day of June 2016

Duly Submitted

Robert F. Caldwell #933046
Applicant - Prose
Polunsky Unit
3872 F.M 350 S.
Livingston, Tex 77351

~~Certification~~

Certificate of Parties Interest

I Robert J. Caldwell declare ~~that~~ a true and correct copy of his Motion for Leave to seek out of time review and Motion for Leave to file paper exceeding 25 sheets was served upon the following parties of interest.

The Honorable Judge Kerry L. Russell
100 N. Broadway
Tyler, Texas
75701

District Attorney Michael J. West
100 N. Broadway
Tyler, Texas
75701

Executed On:
6-6-16

Duly Submitted
Robert J. Caldwell
Applicant -- Prose

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

Affidavit In Support of invoking Constitutional Right of an out of time review

Here comes now Robert J. Caldwell on as prose files this affidavit within the comity of this Honorable Court of Criminal Appeals that the applicant here is invoking Texas Constitution of art 1§13[1]; 1§19[2] and 1§27[3] for an out of time review for the Higher Courts to grant applicant application of his original 11.07 which filed in this said court under WR no 46,194-10 and was at no time took the opportunity to consider the merits of applicant 11.07 of his. Actual Innocence. The applicant also invokes his Fourteenth Amendment of the United State Constitution which is relevant and collaborate with Tex. Const art 1§19.

Thereforth the applicant is asking this Honorable Court of Criminal Appeals to take under great consideration of this Affidavit that is presented to this court.

Affidavit In Support of Constitutional Rights

Now comes applicant in this said affidavit presented his constitutional claim of seeking an out of time review from the highest Court with in the State of Texas. The applicant have been denied by this court of recieving the adequate of due process of law that's he's entitle to of relief thru a writ of habeas corpus.

The applicant present a cognizable claim of Actual Innocence in his 11.07 under

N1. Tex. Const 1§13 in part "no cruel or unusual punishment inflicted ; remedy by due course of law."

N2. Tex. Const 1§19 "No citizen of the state shall be deprive of life, liberty, property.... .... except by the due course of the law of the land

N3. Tex. Const 1§27 "The citizen shall have the right in a peaceable manner of assemble together, for their common good; and apply to those invested with the power of government for redress of grievance, or other purpose by petition, address or remonstance.

N4. U.S. Const 14. "No State shall make or enforce any law which shall abridge the privilege or immunity of citizen of the United States. no shall any State deprive any person of life, liberty or property, without due process of law. or deny person within it's jurisdiction the equal protection of the laws.

Under Tex. Const, and Tex law even in this Honorable Court the due process requires state procedure to provide [proper] procedure safeguard before a claimant property or liberity interest is destroy see Anthony v. State 209 S.W 3d 296.308 (Tex. App - Texarkars 2006) Rev: Rem (citing Thoyonkulatha @ 854).
Wasn't the applicant due course was violated when his liberity interest without any evidence being offered against him or the opportunity to present evidence in his behalf.

The applicant also points in his Second Motion For Inclusion of Record[5] that the district court also inclined to denied his due process.

Didn't the applicant also sent a copy of his 11.07 that was filed in the district court under cause no. 007-81669-97-G attach with documents[6] to provide of his actual innocence of the alleged Aggravated assault that the State has force upon applicant? Isn't also true that this Honorable Court of Crim-Appeals refuse to take judical notice or to even inquire into the facts of applicant case of the merits that presented in applicant 11.07 to see if there is any cognizable issues which applicant ~~has~~ has proven of the preponderance of evidence that applicant application 11.07 shows controversy issue that needs to be resolved? Isn't this Honorable Court responsibility to indulge more into an Actual Innocence claim and should have compare the state 11.07 in which was late transmitted of the applicant to the one that applicant sent as of 11-10-14 attach w/ his Second Motion For Inclusion of Records.

Didn't this Honorable Court did violate applicant Tex. Const art 1§19 and his fourteenth amendment by denied applicant 11.07 of actual innocence claim which is cognizable in a 11.07?

Didn't this Honorable Court ~~[illegible]~~ of Criminal Appeals denied the applicant 11.07 using §4 and issue a white card. didn't this Honorable Court

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N5. this Second Motion For Inclusion of Record was filed 11-10-14 in this Court reflecting the error of the district court.

N6. The Second Motion for Inclusion of Record was submitted with documents (indictment, Victim Record, Police Record) which will reflect the contradiction of indictment, also applicant sent the copy of the original 11.07 that was filed in the district court to demonstrate that §4 is inapplicant to any decision that was made.

never actual applied any law to the facts of applicant case.

Doesn't due process clause of the fourteenth amendment was intended to prevent government of abusing their power or employing it own instrument of oppression see DeShany v. Winnebago County Dept of Soc. Service 489 U.S 189, 196, 109 S.Ct 998, 103 L.Ed 2d 249 (1989).

Isn't it also from the record that the applicant was bar the opportunity to present evidence to support ~~the~~ or deny applicant for Writ of habeas corpus?

Isn't ~~it also from~~ the principles of 11.07 §2(d) was violated to cause the applicant to be deprive of constitutional muster of discharging his burden of proof?

Isn't this one of the mechiasm of to sabotage the applicant constitutional right of due process of Tex Const. art 1§19 and fourteenth amendment.

Isn't it also true that this also inflicts cruel and unusual punishment of violation of Tex. Const art 1§13.

Hasn't the applicant set within the walls of TDCJ for a crime that hasn't never been committed nor adequate investigation at all. Hasn't this court has the power invested in them to reverse this case to order the district court to equitt the applicant case under no evidence.

The applicant is asking this Honorable Court of Appeals to re-evaluate the applicant case and grant a special review of his 11.07 under L.R no 46.194-10.

The applicant has provide in his 11.07 and Second Motion For Inclusion of Record that he has merits and his burden of actual innocence

Unsworn Declaration.

I Robert F. Caldwell being confine within this system TDCJ-ID do hereby declare under the penalty of perjury that this Affidavit In Support is to best of my ability and to best of my knowledge.

Executed On:
6-6-16

Respectfully Submitted
[signature]
Applicant-Prose