

TRIAL COURT CAUSE NUMBER 20077

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EX PARTE

IN THE DISTRICT COURT
336TH JUDICIAL DISTRICT
FANNIN COUNTY, TEXAS

RANDALL GENE WALSH, Applicant

**IN THE COURT OF CRIMINAL APPEALS
TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW
TO THE COURT OF CRIMINAL APPEALS
ON APPLICATION FOR WRIT OF HABEAS CORPUS
NO. WR-32,596-02
EX PARTE RANDALL GENE WALSH, Applicant**

On April 26, 2006, the Court of Criminal Appeals ordered this Court to make findings of fact and conclusions of law relative to the above styled writ of habeas corpus. An evidentiary hearing was held on November 16, 2006. Based upon the evidence presented, and a review of the court's file, the Court hereby enters the following Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

1. Applicant's trial counsel, Mr. David Turner, advised the Applicant that if he did not plead guilty to murder then the State could pursue capital punishment at trial. The applicant was not indicted for capital murder and probably would not have been so indicted.
2. Applicant's trial counsel failed to discuss with the Applicant the elements of the offense of murder.
3. Applicant's trial counsel failed to discuss with the Applicant possible defenses to the charge of murder.
4. Applicant's trial counsel failed to discuss with the Applicant lesser-included offenses that could have been pursued at trial.
5. Applicant's trial counsel failed to stop the plea hearing and make a reasonable inquiry into the applicant's statement during the plea hearing that the shooting had been an "accident," and such an inquiry should have been made under the circumstances.
6. Applicant's plea of guilty to the charge of murder was not voluntarily entered.

II. CONCLUSIONS OF LAW

1. The applicant is entitled to the effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, and

Article I, Section 10, of the Texas Constitution. *Hernandez v. State*, 726 S.W.2d 53 (Tex. Crim. App. 1986); *Strickland v. Washington* 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984).

2. Reasonably effective counsel should have advised the applicant that he was not indicted for capital murder and absent evidence supporting such an allegation that the state could not pursue capital punishment.

3. Reasonably effective counsel should have discussed with the applicant the elements of the offense of murder.

4. Reasonably effective counsel should have discussed with the Applicant possible defenses or lesser-included offenses that could have been pursued at trial.

5. Reasonably effective counsel should have called for an adjournment of the plea hearing when the applicant stated to the trial judge that his conduct at the time of the shooting was an accident.

6. Because of trial counsel's wholly deficient performance in failing to ascertain and substantiate that the applicant's guilty plea was knowingly, voluntarily, and intelligently made, the applicant was rendered ineffective assistance of counsel. Applicant's plea of guilty was not voluntarily, knowingly or intelligently made because of counsel's deficient performance.

7. But for his trial counsel's error, it is reasonable to conclude that the outcome of applicant's case would have been different. There was no conceivable

trial strategy in this case which would sanction the failure of counsel to substantiate that the applicant's guilty plea was knowing, voluntary, and intelligent.

8. In this proceeding for habeas corpus relief, the applicant has met his burden of proving his factual allegations by a preponderance of the evidence.

CONCLUSION

Although this Court does not have the power to grant the relief sought in this case, it does have the power to recommend that the applicant be afforded relief in the Texas Court of Criminal Appeals, and this Court does so recommend that relief be granted, and that applicant's writ of habeas corpus be GRANTED. It is further recommended that the plea of guilty be withdrawn and the parties returned to their positions prior to the plea.

III.

ORDER OF THE COURT

Having considered the evidence as set forth in the evidentiary hearing, pleadings, affidavits, and exhibits introduced, and in light of the foregoing Findings of Fact and Conclusions of Law, it is the opinion of this Court that the relief prayed for in this case be GRANTED.


THE DISTRICT CLERK OF FANNIN COUNTY IS HEREBY ORDERED

to prepare a transcript of all papers in Cause no. 20077, including a transcript of

the evidentiary hearing on this writ, and transmit same to the Texas Court of Criminal Appeals as provided for by Article 11.07 of the Texas Code of Criminal Procedure. The transcript must include, but is not limited to, all pleadings, exhibits, and affidavits filed in this cause number and this proceeding, as well as a copy of these Findings of Fact, Conclusions of Law, and Order of the Court.

It is further ORDERED that copies of this Order be served on the Applicant, his counsel, and counsel for the State.

SO ORDERED ON THIS DATE: Nov 27, 2016



JUDGE PRESIDING

