

**NOS. WR-82, 264-03 and WR-82, 246-04
IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS**

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NOS. 01-11-00139-CR and 01-11-00140-CR

**IN THE COURT OF APPEALS
OF THE FIRST SUPREME JUDICIAL DISTRICT
HOUSTON, TEXAS**

MIGUEL ANGEL NAVARRO, Appellant

V.

THE STATE OF TEXAS, Appellee

**Appeal in Trial Court Case Nos. 10-DCR-05236A and 08-DCR-050238
240th Judicial District Court
Fort Bend County, Texas**

**AMICUS CURIAE BRIEF OF TEXAS APPLESEED;
In Support of Applicant Miguel Angel Navarro**

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IDENTITY AND INTEREST OF AMICI CURIAE

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS AND
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Tex. R. App. P. 11, now comes *Amici* Texas Appleseed to submit this *amicus curiae* brief on behalf of Applicant in the above-captioned matter. Texas Appleseed is a non-profit corporation organized exclusively for charitable and educational purposes that focuses on systemic reform of broad-based social issues and has been a leader in the effort to assure that juveniles receive fair, appropriate treatment in the Texas juvenile justice system. Texas Appleseed's mission is to further the public interest in the development and application of the law and public policy by courts, agencies, legislative bodies, and others in Texas; assisting in the advancement and improvement of the administration of justice; advancing the cause of social, economic, and political justice in Texas. Texas Appleseed has assembled a Board of Directors that consists of distinguished legal practitioners from various sectors of the Texas Bar to pursue these goals. Lewis Brisbois Bisgaard & Smith, LLP and Husch Blackwell, LLP represent Texas Appleseed *pro bono* for the purpose of filing this *amicus curiae* brief. No fee has been paid to either firm for preparing this *amicus curiae* brief.

STATEMENT OF THE CASE

Amici adopt the Statement of the Case set forth in the brief of Applicant Miguel Angel Navarro.

ISSUES PRESENTED

Amici adopt the Issues Presented set forth in the brief of Applicant Miguel Angel Navarro.

STATEMENT OF FACTS

Amici adopt the Statement of Facts set forth in the brief of Applicant Miguel Angel Navarro.

SUMMARY OF ARGUMENT

Currently before this Court are Applicant Miguel Angel Navarro's applications for writs of habeas corpus. The new standards set forth by the Court of Criminal Appeals of Texas in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), which were not available to Applicant until after his original writ application had been denied, make it clear that the transfer order issued by the juvenile court in the underlying matter was so insufficient as to make it invalid, dissolving the jurisdiction of the district court and thus rendering its conviction of Applicant void.

Though subject matter jurisdiction cannot be waived, the State argues that Navarro's current applications for writs of habeas corpus should be denied because the legal basis for the holding "could have been reasonably formulated" from a much earlier U.S. Supreme Court Case, *Kent v. United States*, 369 U.S. 541, 561 (1996), and thus Texas Code of Criminal Procedure, Article 11.07 prohibits this Court from considering Applicant's writ. On the contrary, Article 11.07 makes exception for successor writ applications that raise "claims and issues [that] have not been and could not have been presented previously... because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application." TEX. CODE. CRIM. PRO. art. 11.07 § 4(a). Thus, Applicant did not waive his argument that the district court lacked jurisdiction to enter the conviction because the transfer order from the juvenile court was invalid under *Moon's* standards.

The specific and heightened transfer validity threshold of *Moon* should be respected in large part because of the serious nature of the implications of a juvenile being treated as an adult in the criminal justice system. "[O]nce waiver of jurisdiction occurs, the child loses all protective and rehabilitative possibilities available." *Hidalgo v. State*, 983 S.W.2d 746, 755 (Tex.

Crim. App. 1999) (internal citations omitted.) For these reasons, as well as those set forth below, this Court should reject the State's arguments and grant relief on Applicant's claims.

ARGUMENT

A guiding principle of juvenile justice is that children are different from adults, and thus merit "specialized treatment that takes account of their age and maturity, diminished culpability, and the prospect that they are capable of playing a constructive role in society." Ursula Kilkelly, *Advancing the Rights of Young People in Juvenile Justice: The Impact of Juvenile Law Center*, 88 Temp. L. Rev. 629, 636 (2016). Therefore, given the potential impact to juveniles transferred to, tried and incarcerated in an adult criminal justice system, courts should take care to abide by, if not invoke, all available mechanisms to protect troubled youth.

Given the potential harm to children, focus has been drawn in recent years to the systems and procedures for the transfer of juveniles from juvenile courts to district courts for criminal prosecution. Quoting the seminal Texas case on juvenile transfer, the Texas Court of Criminal Appeals recently wrote:

The transfer of a juvenile offender from juvenile court to criminal court for prosecution as an adult should be regarded as the exception, not the rule; the operative principle is that, whenever feasible, children and adolescents below a certain age should be "protected and rehabilitated rather than subjected to the harshness of the criminal system[.]" Because the waiver of juvenile-court jurisdiction means the loss of that protected status, in *Kent v. United States*, the United States Supreme Court characterized the statutory transfer proceedings . . . as "critically important," and held that any statutory mechanism for waiving juvenile-court jurisdiction must at least "measure up to the essentials of due process and fair treatment."

Matter of E.Y., No. 14-16-00475-CV, 2016 WL 7108407, at *5 (Tex. App. Dec. 6, 2016) (citing *Moon v. State*, 451 S.W.3d 28, 36 (Tex. Crim. App. 2014) (quoting *Kent v. United States*, 383 U.S. 541, 560–62, 86 S. Ct. 1045, 16 L.Ed. 2d 84 (1966))). The *Moon* Court established new, heightened, and specific standards to be met for a juvenile transfer to be valid, and such

standards should be applied retroactively pursuant to U.S. Supreme Court precedent. Because the transfer order at issue in the instant case did not satisfy the requirements of *Moon* or the Juvenile Justice Code, such transfer order was invalid and did not shift subject matter jurisdiction over Applicant's case to the district court. Because the district court lacked jurisdiction to render Applicant's convictions, such convictions are void, and should be overturned. Texas law on juvenile transfer and the public policy to protect and rehabilitate minors requires nothing less.

A. Under Texas Law, Only Valid Juvenile Transfer Orders Convey Subject Matter Jurisdiction on District Courts.

If the transfer order waiving the jurisdiction of the juvenile court and transferring the child to district court is invalid, such order is wholly insufficient to bestow subject matter upon the district court. Additionally, given that the juvenile court has original and exclusive jurisdiction over matters such as these, the district court has no other source of such jurisdiction, excepting a valid waiver and transfer by the juvenile court. "The Juvenile Justice Code of the Texas Family Code specifically provides that the designated juvenile court of each county has 'exclusive original jurisdiction over proceedings in all cases involving . . . delinquent conduct . . . engaged in by a person who was a child within the meaning of this title at the time the person engaged in the conduct.'" *Moon v. State*, 451 S.W. 3d 28, 37 (Tex. Crim. App. 2014). The juvenile court's "exclusive original jurisdiction" extends to all matters involving children aged ten to seventeen (10-17) who have been accused of committing a felony offense. *Id.* If certain factors are met under Section 54.02 of the Juvenile Justice Code, "the juvenile court may waive its exclusive jurisdiction and transfer a child to the appropriate district court...for criminal proceedings[.]" *Moon*, 451 S.W.3d at 38. Those factors are as follows:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was:

(A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or

(B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and

(3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

Guerrero v. State, 471 S.W.3d 1, 2 (Tex. App. 2014); TEX. FAM. CODE § 54.02(a). In its Section 54.02 analysis, the juvenile court must consider, among other matters:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) the sophistication and maturity of the child;

(3) the record and previous history of the child; and

(4) The prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

Matter of E.Y., No. 14-16-00475-CV, 2016 WL 7108407, at *5–6 (Tex. App. Dec. 6, 2016), TEX. FAM. CODE ANN. § 54.02(f). After making the foregoing determinations, if the juvenile court resolves to waive its exclusive jurisdiction over a matter, such court must make specific findings of fact and identify its reasons for waiver, memorialized in a written order. TEX. FAM. CODE ANN. § 54.02(h). Under the auspices of *Moon*, it is no longer enough to rely upon forms or blandly recite the factors under the Code. *See Moon*, 451 S.W.3d at 49. If the juvenile court elects to waive its original jurisdiction over a matter, it is required to “show its work.” *Id.*

The juvenile court in the underlying matter failed to “state specifically in the order its reasons for waiver.” TEX. FAM. CODE ANN. § 54.02(h). Because the juvenile court did not “show its work,” did not explain “its deliberative process on the record, thereby providing a sure-footed and definite basis from which an appellate court can determine its decision was in fact appropriately guided by statutory criteria” (*Moon*, 451 S.W.3d at 49), such transfer order fails to satisfy the threshold requirements of Texas statutory and case law and is therefore invalid.

Furthermore, the substantive standards formulated by *Moon* require retroactive application in cases like Applicant’s. See *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L.Ed 2d 334 (1989) (recognizing that while new constitutional rules of criminal procedure are not retroactive generally, courts should give retroactive effect to new “watershed” procedural rules and to substantive rules of constitutional law”); *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L.Ed 2d 599 (2016), *as revised* (Jan. 27, 2016) (holding that substantive rule of constitutional law regarding sentencing of juveniles applied retroactively to prisoners whose sentences were final before *Montgomery* was decided). Like *Moon*, the substantive rule given retroactive application in *Montgomery* is rooted in the tenet that children are different from adults, and the processes governing the justice system must take these differences into account and afford juveniles appropriate protections to avoid disproportionate impact upon children. *Id.* When the *Moon* standard is properly applied, it is evident that Applicant’s transfer order is insufficient and therefore invalid.

Because the juvenile court’s transfer order in Applicant’s underlying case is invalid, subject matter jurisdiction was never properly conveyed to the district court to which Applicant was transferred to be tried as an adult. Convictions arising from such court should therefore be overturned.

B. Applicant Did Not Waive His Challenge to the District Court’s Subject Matter Jurisdiction Based Upon the Juvenile Court’s Failure to Comply with Statutory Requirements for Transfer Orders.

1. Subject Matter Jurisdiction Cannot Be Waived.

“[S]ubject matter jurisdiction cannot be waived under any circumstances.” *In re E.D.C.*, 88 S.W.3d 789, 792 (Tex. App. 2002) (citing *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000)); see also *Matter of M.K.*, No. 02-16-00291-CV, 2017 WL 281036, at *5 (Tex. App. Jan. 23, 2017). “When a court lacks subject-matter jurisdiction over a proceeding, any orders it renders in that proceeding are void. *Matter of M.K.*, 2017 WL 281036, at *8 (citing *State ex rel Latty v. Owens*, 907 S.W.2d 484, 485 (Tex. 1995)). In absence of a valid transfer order, the district court was without jurisdiction to convict the Applicant and therefore the ensuing conviction is void. *Ex parte Waggoner*, 61 S.W.3d 429, 431 (Tex. Crim. App. 2001).

The State argues that Applicant waived this argument by not filing a “written motion challenging the jurisdiction of the district court before his jury trial.” State’s Brief on the Court’s Order Designating Issues (“State’s Brief”) at 5. As authority for this proposition, the State relies upon Article 4.18 of the Texas Criminal Procedure Code. However, Article 4.18 does not apply to the current matter. Article 4.18, entitled “Claim of Underage,” expressly states that it “does not apply to a claim of defect or error in a discretionary transfer proceeding in juvenile court.” TEX. CRIM. PROC. CODE ANN. art. 4.18(g) (West) (emphasis added). Applicant’s claim that the transfer order is invalid qualifies as a claim of defect or error in the discretionary transfer proceeding in a juvenile court and thus this Article clearly does not apply to the current case facts.

Furthermore, for transgressions that occurred on or after January 1, 1996, “appeals from discretionary transfer orders must be made in the adult system simultaneously with an appeal

from an adult conviction.” 29 *Tex. Prac. Juvenile Law and Practice* § 23.20 (3d ed. 2017) (citing TEX. CRIM. PROC. CODE ANN. art. 44.47). Therefore, contrary to the State’s arguments, the Applicant was not required to appeal the transfer order by filing a written motion challenging the jurisdiction of the district court prior to a jury trial and his applications for writ should be considered on their merits.

2. Applicant’s Claims for Habeas Relief are Not Abrogated by Texas Code of Criminal Procedure, Article 11.07.

“The writ of habeas corpus is a writ of right, and shall never be suspended.” TEX. CONST. art. I § 12; *see also Ex parte Watson*, 601 S.W.2d 350, 352 (Tex. Crim. App. 1980). However, Article 11.07 of the Texas Code of Criminal Procedure codifies the “abuse of the writ doctrine” which prohibits successive post-conviction writ applications unless one of the foregoing statutory exceptions applies. *Ex Parte Sledge*, 391 S.W.3d 104, 106 (Tex. Crim. App. 2013). The exceptions to Section 4 of Article 11.07 that would allow a court to consider a subsequent application include 1) if the claims and issues could not have been brought in a previous application because the “factual or legal basis for the claim was unavailable” at the time the previous application was filed, and 2) if no “rational juror” could have found the applicant guilty beyond a reasonable doubt, but for a violation of the United States Constitution.

TEX. CODE CRIM. PRO. art. 11.07. Applicant’s claim for habeas relief satisfies the exception to Article 11.07 which allows a subsequent writ application if it raises claims and issues that were not and could not have been previously raised because the facts or legal basis for such claims and/or issues was unavailable at the time the previous writ application was made. TEX. CODE CRIM. PRO. art. 11.07 § 4(a)(1). Applicant’s basis for his subsequent writ application is the December 10, 2014, *Moon* decision of the Texas Court of Criminal Appeals, which was

unavailable until after Applicant's previous writ application was already denied in November of 2014.

Article 11.07 was enacted to prevent the abuse and manipulation of the court system. However, the instant matter is not an abuse of the court system. Because Applicant could not have raised *Moon* as a basis for a writ previously, his writ application satisfies the Article 11.07 exception and this Court should properly consider such application.

C. Juvenile Justice Under the Code.

The Texas Juvenile Justice Code is to be "construed to effectuate the following public purposes:"

- (1) to provide for the protection of the public and public safety;
- (2) consistent with the protection of the public and public safety:
 - (A) to promote the concept of punishment for criminal acts;
 - (B) to remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and
 - (C) to provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct;
- (3) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;
- (4) to protect the welfare of the community and to control the commission of unlawful acts by children;
- (5) to achieve the foregoing purposes in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed from the child's family, to give the child the care that should be provided by parents; and
- (6) to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

TEX. FAM. CODE ANN. § 51.01 (West); *see also In Interest of D.Z.*, 869 S.W.2d 561 (Tex. App. 1993) (*writ denied* (June 8, 1994)). The Juvenile Justice Code governs the process and procedures for when a juvenile court may waive its jurisdiction and transfer a matter to district court for criminal proceedings.

The transfer of a juvenile offender from juvenile court to criminal court for prosecution as an adult should be regarded as the exception, not the rule; the operative principle is that, whenever feasible, children and adolescents below a certain age should be “protected and rehabilitated rather than subjected to the harshness of the criminal system[.]” Because the waiver of juvenile-court jurisdiction means the loss of that protected status, in *Kent v. United States*, the United States Supreme Court characterized the statutory transfer proceedings in the District of Columbia as “critically important,” and held that any statutory mechanism for waiving juvenile-court jurisdiction must at least “measure up to the essentials of due process and fair treatment.”

Moon v. State, 451 S.W.3d at 36 (internal citations omitted). If that waiver occurs, “the child loses all protective and rehabilitative possibilities available.” Jack Carnegie, *Juvenile Justice A Look at How One Case Changed the Certification Process*, 78 Tex. B. J. 866, 867 (2015).

Because it is critically important to preserve and advance the protections that exist for children in the justice system, specific requirements for valid transfers, like those set forth in *Moon*, must be enforced and applied with the foregoing goals and warnings in mind. Therefore, for the foregoing reasons, *Amici* Texas Appleseed submits this *amicus curiae* brief on behalf of Applicant in the above-captioned matter.

PRAYER

WHEREFORE, Texas Appleeed prays that this Court reject the State's argument that Applicant has waived his rights for writ of habeas corpus consider Applicant's applications on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of May 2017, a true and correct copy of the above and foregoing *Amicus Curiae* Brief of Texas Appleseed has been forwarded by U.S. Mail, postage prepaid, to:

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