WR-82,264-03
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 5/25/2017 6:16:27 PM
Accepted 5/30/2017 9:03:20 AM
ABEL ACOSTA
CLERK

NOS. WR-82,264-03 and WR-82,264-04

IN THE COURT OF CRIMINAL APPEALS
STATE OF TEXAS

EX PARTE MIGUEL ANGEL NAVARRO

CAUSE NO. 10-DCR-050236A HC2 (murder)
CAUSE NO. 08-DCR-050238 HC2 (aggravated assault)
IN THE 240TH DISTRICT COURT, FORT BEND COUNTY, TEXAS

STATE'S BRIEF ON ORDER OF THE COURT

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IDENTITY OF THE JUDGES, PARTIES, AND COUNSEL

The Courts:

Hon. Walter McMeans Judge, County Court at Law 2 Fort Bend County, Texas	(deceased July 23, 2012) Juvenile Court Judge Presiding at Certification Hearing
Hon. Thomas R. Culver, III Judge, 240th District Court Fort Bend County, Texas	(deceased September 4, 2015) Judge Presiding at Jury Trial and original application for writ of habeas corpus
Hon. Chad Bridges Judge, 240th District Court Fort Bend County, Texas	Judge Presiding Designation of Issues
Hon. Lee Duggan Judge, 240th District Court Fort Bend County, Texas	Retired Justice First Court of Appeals Sitting by assignment on subsequent application for post-conviction writ of habeas corpus

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IN THE COURT OF CRIMINAL APPEALS
STATE OF TEXAS

EX PARTE MIGUEL ANGEL NAVARRO

CAUSE NO. 10-DCR-050236A HC2 (murder)
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IN THE 240TH DISTRICT COURT, FORT BEND COUNTY, TEXAS

STATE'S BRIEF

TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

STATEMENT OF THE CASE

These are subsequent applications for post-conviction writ of habeas corpus, presented under the "new law" exception of Article 11.07, Section 4. Before the habeas court, Applicant argued that *Moon* error in a juvenile court's transfer order is a substantive new constitutional rule that is retroactive to final convictions and also a matter of subject-matter jurisdiction that may be brought at any time. The habeas court agreed and recommended that relief be granted. [3CR 800-801, 810]

On January 25, 2017, this Court ordered Applicant's applications be filed and

set for submission. This Court ordered the parties to file their briefs on the questions stated in its order on or before 90 days from the date of its order or April 25, 2017. This Court granted extensions of time to May 25, 2017.

STATEMENT REGARDING ORAL ARGUMENT

The State does not believe that oral argument would be helpful to this Court. However, should this Court grant oral argument on Applicant's request, the State would appreciate the opportunity to present oral argument as well.

ISSUES ORDERED TO BE BRIEFED

The Court ordered the parties to brief the following issues:

1. "[W]hether Applicant may rely on this Court's opinion in *Moon*, which was delivered after Applicant's conviction became final, and if so,

2. "[W]hether Applicant is entitled to habeas relief based on *Moon*. *See Ex Parte De Los Reyes*, 392 S.W.3d 675 (Tex. Crim. App. 2013)."

Order dated January 25, 2017, at 2.

STATEMENT OF FACTS

A. The facts of the offense.

On December 26, 2007, Applicant, then fifteen years old, accompanied his older brother and his girlfriend and his brother's friend, Rodolpho Diaz, to a bonfire party at the home of the deceased's parents. [3RR42-43; 14RR7-8, 9] The deceased, twenty-year-old Matthew Haltom, was home from college for the holidays and he and his friends were hosting the party. [3RR42-43, 57] Matthew's sister knew Applicant's brother's girlfriend and invited Applicant's group to the party. [3RR45, 47]

When the party became too large, Matthew told Rodolpho to get his friends, whom Matthew did not know, and to "get out." [3RR57, 5RR128] An altercation broke out between the two groups, and in the ensuing street fight, Matthew and two of his friends, Joe Eodice and Joel Arnold, were stabbed. [3RR79, 11RR139, 12RR100] Matthew died on the street. [3RR89] His friends were both seriously wounded and were Life Flighted. [11RR135, 12RR98, 100]

Before officers arrived on scene, Applicant jumped in a car carrying his friends and told them that he had stabbed two people. [6RR64-65, 71] Applicant then went to a friend's home and sat around smoking marijuana before returning home. [683-85]

Detectives arrived at Applicant's home the following morning, having been

informed that Applicant was at the party and may have been the person that stabbed some of the people. [9RR17, 19] The front door was "cracked open" and swung open when knocked to reveal Appellant's five-year-old brother, apparently alone. [9RR19, 20-21] A detective asked the child if "Mikey" was home, and the child pointed to a closed bedroom door. [9RR23-24] When Applicant came out of his room, the detective saw a gray and silver folding knife on Applicant's bed. [9RR26]

In DNA testing, Applicant could not be excluded from the mixed DNA profile derived from the handle of the knife,and DNA profiles developed from blood stains on the blade matched the profiles of the deceased and Joe Eodice. [10RR123, 127, 129]

Applicant testified at the punishment phase of his jury trial. [19RR117-97] Applicant admitted to smoking marijuana and drinking two beers at the party in violation of his probation. [19RR125, 126] Applicant admitted that the "first time [he] ever said sorry was today." [19RR197] The jury sentenced Applicant to ninety-nine years in prison for murder and twenty years for the aggravated assault. [20RR32]

B. Facts of the procedural history of this case.

The juvenile court held a lengthy waiver and transfer hearing on September 23-30, 2008. [2JRR1, 23; 7JRR1] A copy of the transfer order entered on September 30,

2008, is included in the habeas court's findings [3CR-HC2[1] at 802-809], a copy of which is appended hereto as Appendix A.

In separate indictments, a grand jury indicted Applicant for the murder of Matthew Haltom, the aggravated assault of Joe Eodice, and the aggravated assault of Joel Arnold. [3RR14-15] A jury convicted Applicant for the murder of Matthew Haltom and the aggravated assault of Joe Eodice, and acquitted Applicant of the aggravated assault of Joel Arnold.[2] [15RR62]

The State's evidence at punishment was lengthy and is reported in three volumes of the court reporter's record, Volumes 16-19. On January 28, 2011, the trial court sentenced Applicant in accordance with the jury's verdicts. [20RR33]

Applicant asserted the following five issues on direct appeal:

> Issue 1: The juvenile court erred in waiving jurisdiction and transferring the cases to the district court because there was no probable cause to support the charge of aggravated assault of Joel Arnold.

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[1] The habeas court's findings of fact, conclusions of law, and recommendation in Nos. WR-82,264-03 & WR-82,264-04 are identical. All page references herein are to the Clerk's Record in Trial Court Writ No. 10-DCR-050236A HC2 for the murder conviction.

[2] Applicant has since admitted he stabbed all three victims. Alain Stephens & Hannah McBride, "Adult Crime, Adult Time: How Texas Fast-Tracked Kids to Life in Prison," Texas Standard (Dec. 18, 2016), <http://www.texasstandard.org/stories/adult-crime-adult-time/>.

Issue 2: The juvenile court erred in refusing to hold a suppression hearing in the certification hearing.

Issue 3 The trial court erred in failing to suppress the knife found after officers made a warrantless entry into appellant's home.

Issue 4: The trial court erred in failing to charge the jury regarding the right to self-defense against multiple assailants in the aggravated assault case.

Issue 5: The trial court erred in failing to charge the jury regarding the right to self-defense and the right to defend a third party against multiple assailants in the murder case.

The court of appeals affirmed the trial court's judgment. *Navarro v. State*, Nos. 01-11-00139-CR & 01-11-00140-CR, 2012 WL 3776372 (Tex. App.–Houston [1st Dist.] Aug. 30, 2012, pet. ref'd) (not designated for publication). Mandates issued on January 9, 2013.

On April 4, 2014, Applicant's appellate counsel filed Applicant's original applications for writ of habeas corpus pursuant to Article 11.07, Code of Criminal Procedure in each cause. Applicant asserted two grounds for relief from the murder conviction:

1. I was denied effective assistance of counsel because trial counsel failed to object to the omission of a multiple assailants charge.

2. I was denied the effective assistance of counsel because trial counsel failed to object to my 99 year sentence being cruel and unusual punishment under U.S. Const. 8th Amend. or Tex. Const. Art. 1, Sec. 13.

Applicant asserted a sole ground for relief from the aggravated assault conviction:

> I was denied effective assistance of counsel because trial counsel failed to object to the omission of a multiple assailants charge.

This Court denied relief without written orders. *Ex parte Navarro*, Nos. WR-82,264-01 & WR-82,264-012 (Tex. Crim. App. Nov. 26, 2014).

On December 10, 2014, this Court issued its opinion in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014).

On November 19, 2015, Applicant filed these identical subsequent applications for writ of habeas corpus, asserting for the first time that his transfer order was deficient:

1. The transfer order did not set out sufficient facts to justify the transfer per *Moon*. This denied appellant due process and deprived the district court of jurisdiction.

2. New scientific evidence not available at trial renders key State's scientific expert testimony false. Had new evidence been presented, applicant would not have been convicted.

On December 23, 2015, Hon. Chad Bridges, Judge Presiding, 240th District Court entered an order designating the following issues:

1. Whether the current claims and issues have not been and could not have been presented previously in the applicant's original application because the factual or legal basis for the claim was unavailable on the date the applicant filed his previous application.

2. Whether the applicant can waive error in an invalid and/or insufficient transfer order.

[1CR160-161]

On August 31, 2016, after hearing the arguments of counsel, the habeas judge, Hon. Lee F. Duggan, Jr., entered findings of fact and conclusions of law and recommended granting relief on Ground One. [Appendix A, copy of the FFCL and recommendation]

On January 25, 2017, this Court ordered the applications filed and set for submission, designated issues for the parties to brief, and denied Ground Two.

SUMMARY OF THE ARGUMENT

This Court asked for briefing on:

1. "[W]hether Applicant may rely on this Court's opinion in *Moon*,"[3] and if so,

2. "[W]hether Applicant is entitled to habeas relief based on *Moon*. *See Ex parte De Los Reyes*, 392 S.W.3d 675 (Tex. Crim. App. 2013)."

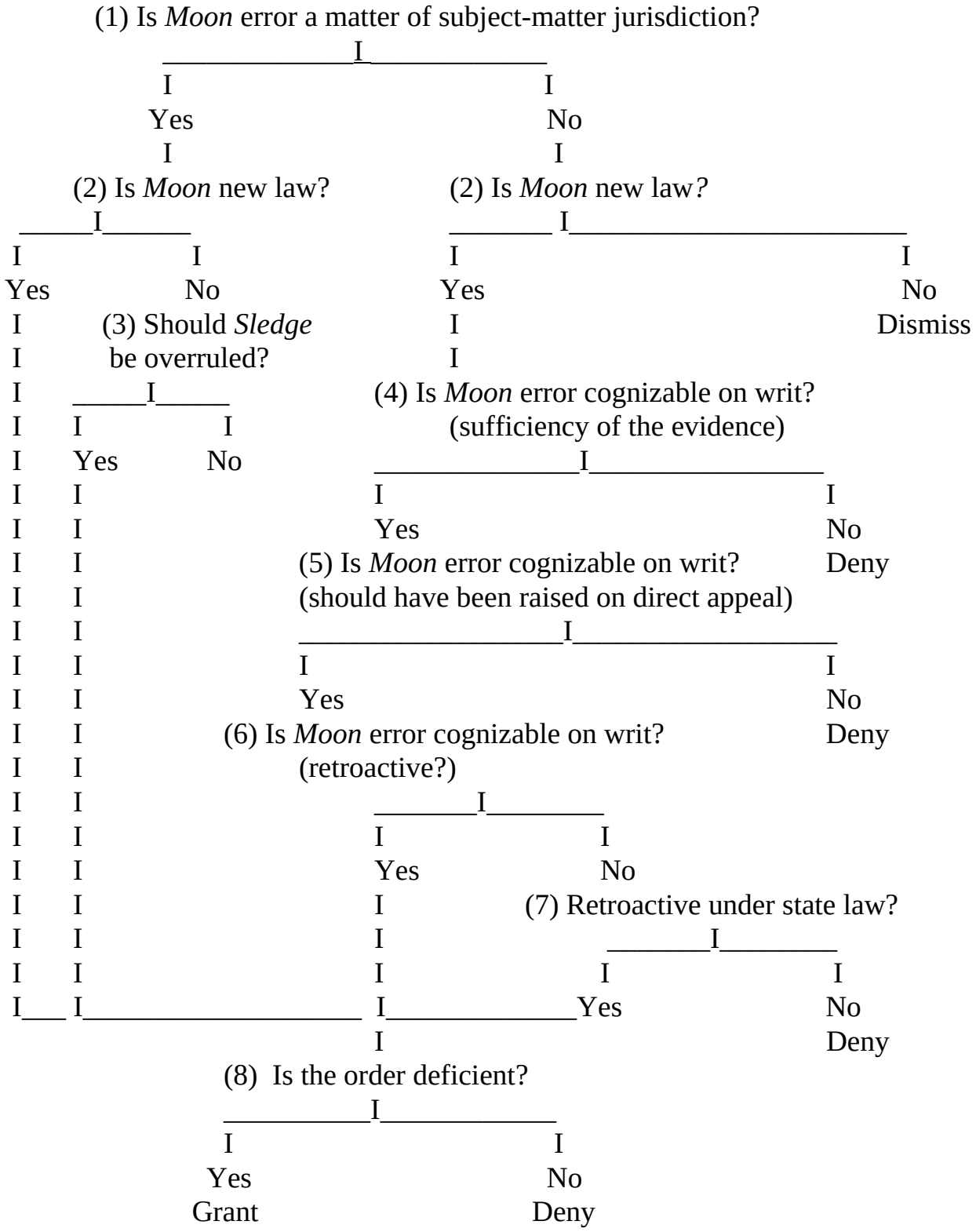
Order dated January 25, 2017, at 2.

The short answer to the first question is "no." If the Court were to disagree, then the short answer to the second question is "no."

The following decision tree summarizes the State's argument regarding whether Applicant may rely on this Court's opinion in *Moon* in a successive application for

[3] *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014).

writ of habeas corpus and be entitled to habeas relief. A numbers key follows this diagram. The left side of the decision tree reflects the habeas court's finding that *Moon* is a matter of subject-matter jurisdiction. The right side of the decision tree reflects cognizability of Applicant's claim on application for writ of habeas corpus.


(1) Is *Moon* error a matter of subject-matter jurisdiction?
Yes
No
(2) Is *Moon* new law?
Yes
No
(3) Should *Sledge* be overruled?
Yes
No
(2) Is *Moon* new law*?*
Yes
No
Dismiss
(4) Is *Moon* error cognizable on writ? (sufficiency of the evidence)
Yes
No
Deny
(5) Is *Moon* error cognizable on writ? (should have been raised on direct appeal)
Yes
No
Deny
(6) Is *Moon* error cognizable on writ? (retroactive?)
Yes
No
(7) Retroactive under state law?
Yes
No
Deny
(8) Is the order deficient?
Yes
Grant
No
Deny

(1) Is *Moon* error a matter of subject-matter jurisdiction?

(2) Is *Moon* new law? In other words, was the legal basis for *Moon* "not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before [Applicant's first application]." Tex. Code Crim. Proc. art. 11.07, § 4(a)(1) & (b) (West 2015).

(3) If *Moon* error is a matter of subject-matter jurisdiction, but not new law, should this Court overrule *Ex parte Sledge*, 391 S.W.3d 104 (Tex. Crim. App. 2013) (barring relief on a subsequent application on a jurisdictional issue)?

(4) If *Moon* error is not a matter of subject-matter jurisdiction, but is new law, is it cognizable on writ? That is, sufficiency of the evidence to support a conviction is not cognizable on writ of habeas corpus; is the sufficiency of findings of fact in a transfer order, made to enable appellate review, also not cognizable on writ?

(5) If *Moon* error is new law, is it cognizable on writ? That is, should the error or defect(s) have been raised on direct appeal as provided by Tex. Crim. Proc. art. 4.18(g) (West 2008)?

(6) If *Moon* is new law, is it cognizable on writ? That is, does *Moon* apply retroactively under *Teague v. Lane*, 489 U.S. 288, 301 (1989)? *See Ex parte De Los Reyes*, 392 S.W.3d 675, 679 (Tex. Crim. App. 2013) (citing *Ex parte Lave*, 257 S.W.3d 235 (Tex. Crim. App. 2008)).

(7) If no, should *Moon* be accorded retroactive effect as a matter of state habeas law?

(8) Is the transfer order in this case deficient?

This Court's opinion in *Moon* has raised questions about the nature of the transfer order. *See, e.g., In re J.G.*, 495 S.W.3d 354 (Tex. App.--Houston [1st Dist.] 2016, pet. filed Sept. 21, 2016, No. 16-0468) (amicus brief of Cameron Moon,

addressing whether the district court's judgment is "void" when a transfer order is reversed under *Moon*); *Ex parte Riggins*, No. WR-85,120-01 (Tex. Crim. App. Oct. 5, 2016) (not designated for publication; denying relief without written order on the trial court's findings regarding alleged *Moon* error in the transfer order, see Appendix B). The nature of a juvenile court's transfer order should be clarified.

ARGUMENT

A. Moon error is not a matter of subject-matter jurisdiction.

In recommending that this Court grant relief, the habeas court found that *Moon* error is a matter of subject-matter jurisdiction "that can never be waived," and that the judgment is void. [FF #25, #26, #27; CL #1,[4] #4, #6]

1. Government Code, Section 23.001 confers subject-matter jurisdiction to hear juvenile cases in district and county courts.

The Texas Constitution does not explicitly recognize the Juvenile Justice System or juvenile courts. Tex. Const. art. V, § 1. The Juvenile Justice System is wholly statutory in nature. *Rushing v. State*, 85 S.W.3d 283, 286 (Tex. Crim. App. 2002) ("It is the Legislature, after all, that established the juvenile court system"). A

[4] There are two #1 conclusions of law. The second #1 conclusion of law states, "The juvenile court's transfer order was therefore invalid. Consequently, the district court to which Applicant was transferred for trial never properly acquired subject-matter jurisdiction over Applicant's case, and the district court's judgment is void. *Nix v. State*, 65 S.W.3d 664, 668 (Tex. Crim. App. 2001)." [3CR at800]

statute not often cited in discretionary transfer cases is Government Code, Section 23.001, entitled "Juvenile Jurisdiction," which provides,

> Each district court, county court, and statutory county court exercising any of the constitutional jurisdiction of either a county court or a district court has jurisdiction over juvenile matters and may be designated a juvenile court.

Tex. Gov't Code, § 23.001 (West 2008).[5]

"Subject matter jurisdiction refers to the court's power to hear a particular type of suit." *In re A.D.D.*, 974 S.W.2d 299, 303 (Tex. App.–San Antonio 1998, no writ) (quoting *CSR Ltd v. Link*, 925 S.W.2d 591, 594 (Tex. 1996)). Thus, all district or county courts have subject-matter jurisdiction over juvenile matters. However, the authority to act as a juvenile court must be conferred by the Juvenile Justice Board of the county. Tex. Fam. Code, § 51.04(b) (West 2008). This statute provides no special requirements for the selection of the juvenile court other than, "[T]he selection shall be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare and that changes in the designation of the juvenile courts be made only when the best interest of the public requires it." Tex. Fam. Code, § 51.04(e) (West 2008). The designated juvenile court "has exclusive original

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[5] The habeas court did not cite Section 23.001 in its findings of fact and conclusions of law. [3CR781-810]

jurisdiction over proceedings" under the Juvenile Justice Code. Tex. Fam. Code, § 51.04(a) (West 2008).

Nonetheless, if a juvenile does not file a written objection to the jurisdiction of the district court before his case is disposed, he may not later claim error in the judgment on the basis of jurisdiction. Tex. Code Crim. Proc. art. 4.18(a)-(e) (West 2008). Thus, the original jurisdiction granted juvenile courts may be waived because Government Code, Section 23.001 confers subject-matter jurisdiction on the district courts. A transfer order does not confer subject-matter jurisdiction in the district court.

2. A juvenile may waive the juvenile justice court's "exclusive original jurisdiction"; therefore, a transfer order does not confer subject-matter jurisdiction in the district court.

An elementary principle of subject-matter jurisdiction is that it cannot be waived or forfeited and cannot be conferred on a court by consent. *Gonzalez v. Thaler*, 132 S.Ct. 641, 648 (2012) (addressing Congress's jurisdictional grant to the courts of appeals to hear habeas appeals and the limitation of that jurisdiction); *Henderson v. Shinseki*, 562 U.S. 428, 434-35 (2011) (subject matter jurisdiction may be raised at any time "even if the party had previously acknowledged the trial court's jurisdiction"); *In re A.D.D.*, 974 S.W.2d at 303 (not by consent or waiver, quoting *Federal Underwriters Exch. v. Pugh*, 174 S.W.2d 598, 600 (Tex. 1943)).

While the juvenile court has "exclusive original jurisdiction" to hear cases

involving delinquent conduct by persons aged ten to seventeen years of age, the Code of Criminal Procedure requires a person to object to the jurisdiction of the district court on the basis of age or the objection is waived. Tex. Code Crim. Proc. art. 4.18(a)-(e). In other words, by failing to object, a person may confer jurisdiction in the district court and waive the "exclusive original jurisdiction" of a juvenile court over juvenile conduct. A juvenile court's transfer order does not transfer subject-matter jurisdiction.[6]

3. Error in a juvenile court's transfer order does not divest the district court of jurisdiction; therefore the transfer order is not a matter of subject-matter or personal jurisdiction.

In *State v. Rinehart*, 333 S.W.3d 154 (Tex. Crim. App. 2011), this Court held that an erroneous transfer order does not divest the district court of jurisdiction over the case:

> [T]he legislative provision in Article 44.47(b)[7] that a defendant may appeal a juvenile court's transfer order "only in conjunction with the appeal of a conviction . . . for which the defendant was transferred to

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[6] *But see, Rushing*, 85 S.W.3d at 286 (like the ten-day preparation rule, "the Legislature could amend the traditional method for treating jurisdictional error to require an objection to preserve a particular kind of jurisdictional claim of legislative creation.").

[7] The Legislature repealed Article 44.47 effective September 1, 2015, to an order issued on or after the effective date. Act eff. Sept. 1, 2015, 84th Leg., R.S., ch. 74, §§ 5, 6, 2015 Tex. Gen. Laws (S.B. 888). Applicant's transfer order should be decided under then effective Article 44.47, a copy of which is attached hereto in Appendix C.

> criminal court" is some indication that a juvenile court's erroneous transfer order does not divest the criminal district court of jurisdiction over the case.

Id. at 159.

"It is not apparent to us that a juvenile court's erroneous ruling on a due-diligence issue deprives the criminal district court 'of jurisdiction over the matter.'" *Rinehart*, 333 S.W.3d at 159 (referring to the quashing of the indictment based on Rhinehart's allegation that the juvenile court's transfer order was invalid because the State failed to proceed with due diligence before Rhinehart's eighteenth birthday).

Like *Rhinehart*, a juvenile court's failure to state specific facts in its transfer order, allegedly making it invalid, does not deprive the district court of subject-matter jurisdiction. A defect in the transfer order does not deprive the criminal district court of jurisdiction over the case because the district court already has subject matter jurisdiction over felony cases and juvenile matters. Tex. Code Crim. Proc. arts. 4.01 & 4.05 (West 2008); Tex. Gov't Code § 23.001. Rather, a defect or error in a transfer order may be raised on appeal.[8] Tex. Code Crim. Proc. art. 4.18(g). Similar to a defective indictment that confers personal jurisdiction in a case even if it is missing an element of the charged offense, a defective transfer order still waives the juvenile court's original jurisdiction and transfers the juvenile to criminal district court.

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[8] Applicant should have, like Moon, raised the defect, if any, in the transfer order on direct appeal.

Further indicating that a juvenile court's erroneous transfer order does not divest the criminal district court of jurisdiction over the case, Family Code, Subsection 54.02(i) provides, "A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court." Tex. Fam. Code § 54.02(i) (West 2008),[9] *but see Ex parte Arango*, Nos. 01-16-00607-CR & 01-16-00630-CR, 2017 WL 1404370, at *8 (Tex. App.–Houston [1st Dist.] April 18, 2017, mtn for reh'g pending, response requested) (granting pre-trial habeas relief, setting aside the juvenile court's transfer order, dismissing the indictment, and remanding the case to juvenile court where the case remains pending). Because error in a transfer order does not divest the district court of subject-matter or personal jurisdiction, it cannot be the case that a transfer order confers "jurisdiction" on the district court.

In *Kontrick v. Ryan*, 540 U.S. 443 (2004), the Supreme Court opined, "Clarity would be facilitated if courts and litigants used the label 'jurisdictional' not for claim-processing rules,[10] but only for prescriptions delineating the classes of cases

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[9] In *Moon*, this Court noted that neither party challenged the court of appeals's "ultimate disposition" that the cause remains "pending in the juvenile court." *Moon*, 451 S.W.3d 52 at n.90. This Court did not address the effect of Section 54.02(i).

[10] Claim-processing rules "are rules that seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011).

(subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Id.* at 455 (effectively eliminating jurisdictional treatment for all procedural requirements for appeal[11]).

As this Court stated in *Rushing*, "It is the Legislature, after all, that established the juvenile court system, and ultimately it is up to that body to determine what procedures guide the movement of cases from that system to the adult criminal court system." *Rushing*, 85 S.W.3d at 286-87 (Article 4.18, which bars a claim that the juvenile court had not waived jurisdiction and certified Rushing as an adult, is not an unconstitutional violation of the separation of powers provision). Section 54.02, provides claim-processing rules, i.e., threshold conditions for the transfer of a person from juvenile to district court. *See Davis v. State*, 956 S.W.2d 555, 559 (Tex. Crim. App. 1997) (procedural irregularity in order referring case to magistrate is not jurisdictional error; "errors involving the violation of a statutory procedure have not been deemed to be void, but voidable"); *Gonzalez*, 132 S.Ct. at 648-49 (discussing the jurisdictional and nonjurisdictional language of 28 U.S.C.A. § 2253(c), providing for the appeal of a federal district court's denial of habeas relief to a state prisoner).

Applicant's claim of *Moon* error is not a matter of subject-matter jurisdiction and, as discussed below in Subsection C, is not new law and should be dismissed.

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[11] *Gonzalez v. Thaler*, 540 U.S. 443, 665 n.9 (2004) (Scalia, J., dissenting).

B. Even if this Court were to find that Moon error is a matter of subject-matter jurisdiction, this Court should still determine whether Moon is new law, because if not, the claim should be dismissed pursuant to Ex parte Sledge, 391 S.W.3d 104 (Tex. Crim. App. 2013).

Even if this Court were to find that *Moon* error is a matter of subject-matter jurisdiction, it should still determine whether *Moon* error is new law under Section 4 because if not, *Ex parte Sledge*, 391 S.W.3d 104 (Tex. Crim. App. 2013), requires this Court to dismiss Applicant's claim.

In *Ex parte Sledge*, Sledge alleged in a subsequent application that a convicting court lacked statutory authority to revoke community supervision after the period of supervision had expired. *Ex parte Sledge*, 391 S.W.3d at 105-06. However, Sledge did not assert new intervening law, specific new facts, or actual innocence to meet a Section 4 exception. *Id.* at 106-07. This Court held that Section 4 barred Sledge's jurisdictional claim. *Id.* at 111. In reaching this decision, this Court addressed the dissent's argument that a judgment is not a final conviction under Article 11.07 if the trial court lacked subject-matter jurisdiction. *Id.* at 108-09, *addressing id.* at 113-14 (Alcala, J., dissenting):

> It is, of course, axiomatic in our case law that review of jurisdictional claims are cognizable in post-conviction habeas corpus proceedings. Moreover, we have recognized them to be cognizable without regard to ordinary notions of procedural default—essentially because it is simply not optional with the parties to agree to confer subject-matter jurisdiction on a convicting court where that jurisdiction is lacking. Therefore, unless and until such time as the Legislature might say otherwise, in

> exercise of its constitutional authority to regulate post-conviction writ procedure, a meritorious claim of truly jurisdictional dimension will "always" be subject to vindication in an original post-conviction application for writ of habeas corpus. We do not mean here to say otherwise. Had the applicant properly raised his present claim in his original writ, we would not hesitate to reach the merits and, if appropriate, grant relief. But in the context of subsequent post-conviction writ applications, the Legislature has validly exercised its constitutionally-endowed regulatory authority to make it clear that only those claims that fit within the statutory exceptions prescribed by Subsections 4(a)(1) and (2) of Article 11.07 are cognizable. Short of overruling *Ex parte Davis*, 947 S.W.2d 216 (Tex. Crim. App. 1996), we are not at liberty talismanically to invoke "jurisdiction" to reach the merits and grant relief in a subsequent writ application.
>
> . . . .
>
> Because the statute plainly admits of no jurisdictional exception, we have no call to resort to extra-textual considerations. . . . Moreover, to the extent that we have looked to legislative history in the past to construe Section 4, we have emphasized the clear legislative intent to provide but "one [full] bite of the apple," with no qualification expressed for habeas claims predicated on jurisdictional, as opposed to merely constitutional, defects. To the contrary, the Legislature meant largely to mimic federal abuse of the writ practice. We note that, in applying the federal abuse of the writ provision applicable to challenges of federal criminal convictions, at least one federal court of appeals has recently held that the federal district court rightly declined to entertain a petitioner's claim in a subsequent federal habeas corpus petition that the convicting court had lacked jurisdiction to convict him.

Ex parte Sledge, 391 S.W.3d at 109-11 (footnotes omitted).

The Legislature has not changed Section 4 since *Ex parte Sledge.* Thus, even if the Court were to find that *Moon* error is a matter of subject-matter jurisdiction, it should address whether *Moon* error is new law as defined by Section 4 and, as

discussed in the next section, should find it is not.

C. Applicant may not rely on Moon because it is not new law as defined by Article 11.07, Section 4(b).

To get him through the Section 4 gateway for a subsequent application, Applicant has repeatedly asserted that the "show your work" requirement of *Moon* is new law. *See, e.g.,* 3CR at 727-28. Article 11.07, Section 4 provides:

> Sec. 4. (a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:
>
> > (1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application; or
> >
> > (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.
>
> (b) For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.
>
> (c) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

Tex. Code Crim. Proc. art. 11.07, § 4 (West 2015).

In Section II of its *Moon* opinion, this Court quoted the "show your work" requirement from the United States Supreme Court's opinion in *Kent v. United States*, 383 U.S. 541 (1966):

The appellate court

> must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not assume that there are adequate reasons, nor may it merely assume that full investigation has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the [relevant District of Columbia] statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of full investigation has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review.

Moon, 451 S.W.3d at 36 (quoting *Kent*, 383 U.S. at 561 (internal quotation marks omitted)).

This Court further quoted Section 54.02(h), Family Code, "Finally, should the juvenile court choose to exercise its discretion to waive jurisdiction over the child, then the Juvenile Justice Code directs it to 'state specifically' in a written order 'its reasons for waiver and [to] certify its action, including the written order and findings

of the court.'" *Moon*, 451 S.W.3d at 38.

Moon's "show its work" requirement is long-standing and should have been required by the appellate courts. It was not, and this Court put its foot down in *Moon.* The enforcement of the "show its work" requirement may be new, but the law requiring a juvenile court to "show its work" is not.

Moon is similar to "*Chadwick v. State*, 309 S.W.3d 558 (Tex. Crim. App. 2010), in which this Court recognized for the first time that a finding of mental illness can trump the right of self-representation." *Ex parte Panetti*, 326 S.W.3d 615, 616 (Tex. Crim. App. 2010) (Holcomb, J., dissenting to the dismissal of a subsequent writ application). *Chadwick* is not new law under Section 4 because it was decided after *Indiana v. Edwards*, 554 U.S. 164 (2008), which recognized that "the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so." *Edwards*, 554 U.S. at 177-78, *see Ex parte Panetti*, 326 S.W.3d at 615-16 (Holcomb, J., dissenting).

Applicant may not rely on this Court's opinion in *Moon* to get him through the Section 4 gateway and his claim should be dismissed.

D. Even if Moon is new law, it is not cognizable on application for writ of habeas corpus.

"A threshold determination in any post-conviction habeas corpus application is whether the claim presented is cognizable by way of collateral attack." *Ex parte McLain*, 869 S.W.2d 349, 350 (Tex. Crim. App. 1994). An application will be denied when the claim is not cognizable. *Ex parte Grigsby*, 137 S.W.3d 673, 674 (Tex. Crim. App. 2004).

> "[A] 'denial' signifies that we addressed and rejected the merits of a particular claim while a 'dismissal' means that we declined to consider the claim for reasons unrelated to the claim's merits." *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997). However, we also held that "[a] disposition is related to the merits if it decides the merits *or makes a determination that the merits of the applicant's claims can never be decided.*" *Id.* (emphasis added).

Ex parte Grigsby, 137 S.W.3d at 674 (reaffirming that a sufficiency claim is not cognizable on application for writ of habeas corpus and will be denied).

1. Moon error is a challenge to the sufficiency of the evidence.

In *Moon*, this Court held, "[A]n appellate court should first review the juvenile court's specific findings of fact regarding the Section 54.02(f) factors under 'traditional sufficiency of the evidence review.'" *Moon*, 451 S.W.3d at 47.

> Even had the juvenile court cited the appellant's background as an alternative basis to justify his transfer, the court of appeals was correct to measure the sufficiency of the evidence to support this reason against the findings of fact made in the transfer order itself and to conclude that ***the evidence was insufficient*** to support those findings.

Moon, 451 S.W.3d at 51-52 (emphasis added).

"[I]t is well-established that a challenge to the sufficiency of the evidence used to sustain a felony conviction is not cognizable on an application for a post-conviction writ of habeas." *Ex parte Grigsby*, 137 S.W.3d at 674.

Applicant's transfer order specifically describes three crimes against persons, (1) murder "by stabbing Matthew Haltom with a knife" [3CR-HC2 at 804], (2) aggravated assault "by stabbing Joe Eodice" using a knife [3CR-HC2 at 804], and (3) aggravated assault "by stabbing Joel Arnold" using a knife [3CR-HC2 at 804-805]. Thus, there are some specific facts stated in the transfer order in support of the juvenile court's decision to waive its original jurisdiction and transfer this case to district court–this is not a case of no evidence to support the order.

At least in this case, *Moon* error is a matter of sufficiency of the evidence to support the trial court's discretionary transfer. As a matter of sufficiency of the evidence, *Moon* error is not cognizable on writ of habeas corpus and should be denied.

2. Moon error is an error or defect that should have been raised on appeal.

At the time the juvenile entered its transfer order in this case, Article 4.18(g) provided:

> This article does not apply to a claim of a defect or error in a discretionary transfer proceeding in juvenile court. A defendant may appeal a defect or error only as provided by Article 44.47.

Tex. Crim. Proc. art. 4.18(g) (West 2008).

Article 44.47, applicable to Applicant's transfer order, although repealed effective September 1 2015, for future transfer orders, provided in pertinent part:

> (a) A defendant may appeal an order of a juvenile court certifying the defendant to stand trial as an adult and transferring the defendant to a criminal court under Section 54.02, Family Code.
>
> (b) A defendant may appeal a transfer under Subsection (a) only in conjunction with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court.

Tex. Crim. Proc. art. 44.47(a) & (b) (West 2008).

Article 11.07 "should not be used to litigate matters which should have been raised on appeal." *Ex parte Banks*, 769 S.W.2d 539, 540 (Tex. Crim. App. 1989) (op. on rehearing).

As applicable to the transfer order in this case, Code of Criminal Procedure, Article 44.47 provided for the appeal of an error or defect in a transfer order. Subsection (c) provided, "An appeal under this section is a criminal matter and is governed by this code and the Texas Rules of Appellate Procedure that apply to a criminal case." Tex. Code Crim. Proc. art. 44.47(c). Rule of Appellate Procedure 33.1 required, as it does now, an objection and ruling or refusal to rule to preserve error. Tex. R. App. P. 33.1. Error or defect in a transfer order should be classified as a category-three right as it may be forfeited by inaction. *See Ex parte Marascio*, 471

S.W.3d 832, 835 (Tex. Crim. App. 2015) (Keasler, J., concurring and quoting *Marin v. State*, 851 S.W.2d 275, 279 (Tex. Crim. App. 1993), *overruled on other grounds by Cain v. State*, 947 S.W.2d 262 (Tex. Crim. App. 1997)). Like Moon, Applicant could have and should have appealed any defect(s) or error in his transfer order on direct appeal.

However, in this case, Applicant not only forfeited review by inaction, he explicitly responded that there was no defect in the transfer order:

> THE COURT: So in this case there was no -- is there a claim that there is a defect in the certification?
>
> DEFENSE COUNSEL: No, Your Honor. I just wanted to point out the fact that there is different language from the certification petition to the indictment now pending in this court.
>
> THE COURT: So there is no objection that the defendant was properly certified on the allegation of murder and on the allegation of aggravated assault, correct?
>
> DEFENSE COUNSEL: Just the fact that under the certification it was 19.02, and under the indictment on murder, Judge, it's now 19.02(b)(2).
>
> THE COURT: I see. Okay. Objection is overruled.

[2RR12]

Applicant's ground for relief one should be denied as not cognizable on application for writ of habeas corpus.

3. If Moon is new law, Moon should not retroactively apply to cases that were final. See Ex parte De Los Reyes, 392 S.W.3d 675 (Tex. Crim. App. 2013).

Even if the Court were to find that *Moon* is new law, relief should be denied because a new constitutional rule is not retroactively applied. *See Ex parte De Los Reyes*, 392 S.W.3d 675 (Tex. Crim. App. 2013).

In *Ex parte De Los Reyes*, this Court denied relief after addressing whether *Padilla v. Kentucky*, 559 U.S. 356 (2010),[12] would apply retroactively to Texas cases. *Ex parte De Los Reyes*, 392 S.W.3d at 678, 679. This Court observed that in *Chaidez v. United States*, 133 S.Ct. 1103 (2013), "the United States Supreme Court explicitly held that *Padilla* announced a new rule, and thus, does not apply retroactively to cases already on direct review." *Ex parte De Los Reyes*, 392 S.W.3d at 678.

> "[A] case announces a new rule," *Teague v. Lane*, 489 U.S. 288 (1989) explained, "when it breaks new ground or imposes a new obligation" on the government. 489 U.S. at 301. "To put it differently," we continued, "a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final." *Ibid.* And a holding is not so dictated, we later stated, unless it would have been "apparent to all reasonable jurists." *Lambrix v. Singlettary*, 520 U.S. 518, 527-528 (1997).

Chaidez, 133 S.Ct. at 1107.

The Supreme Court has recognized two categories of rules that are not subject

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[12] Deciding that the Sixth Amendment right to counsel extends to the collateral consequence of deportation.

to this general retroactivity bar:

> First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include rules forbidding criminal punishment of certain primary conduct, as well as rules prohibiting a certain category of punishment for a class of defendants because of their status or offense . . . .
>
> Second, courts must give retroactive effect to new watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.

Montgomery v. Louisiana, 136 S.Ct. 718,728 (2016) (internal quotations deleted, citations omitted).

In *Schriro v. Summerlin*, 542 U.S. 349 (2004), the Supreme Court held that the rule of *Ring v. Arizona,* 536 U.S. 584 (2002), requiring that a jury find the aggravating circumstance necessary for imposition of the death penalty, is not retroactive because it is a procedural rule. *Schriro*, 542 U.S. at 358. The Court reasoned that "the range of conduct punished by death in Arizona was the same before *Ring* as after," and that requiring a jury to determine a certain fact essential to the death penalty under Arizona law was not the same as the Court's making a certain fact essential. *Id.* 355. Similarly, requiring specific facts in a transfer order does not mean that a juvenile would not be transferred to district court. Section 54.02 provides in pertinent part that a person, who like Applicant is over eighteen years of age, may be transferred if "a previous transfer order was reversed by an appellate court." Tex. Fam. Code, § 54.02(j)(4)(B)(iii) (West 2017).

With regard to the argument that *Ring* was a watershed rule of criminal procedure, the Court reasoned that "for every argument why juries are more accurate factfinders, there is another why they are less accurate." *Schriro*, 542 U.S. at 356. "The values implemented by the right to jury trial would not measurably be served by requiring retrial of all persons convicted in the past by procedures not consistent with the Sixth Amendment right to jury trial." *Schriro*, 542 U.S. at 357. Similarly, the value of appellate review of a transfer order would not be immeasurably served by requiring retrial of all persons convicted in the past, particularly when, as here, there are some specific facts stated in the transfer order that support the trial court's discretionary transfer.

Applicant argued in the habeas court that *Moon* is a new substantive rule akin to that prohibiting a mandatory life sentence for a juvenile. [3CR728, citing *Miller v. Alabama*, 132 S.Ct. 2455 (2012)] However, unlike *Miller*, *Moon* does not prohibit a certain category of punishment. Under *Moon* no "class" of offender has gained new substantive rights. *Moon* is not a new substantive rule.

Rather, *Moon* requires specific fact findings in a transfer order, a procedural safeguard, "to assure that the juvenile court's broad discretion is not abused." *Moon*, 451 S.W.3d at 49 (citing *Kent*'s insistence upon the primacy of appellate review). Further requiring specific fact findings in a juvenile court's transfer order does not implicate the fundamental fairness and accuracy of the criminal proceeding in district

court. *Moon* is neither a new substantive rule, nor a new watershed rule of criminal procedure.

4. This case presents no compelling reason to deviate from this Court's practice of following Teague as a matter of state law.

While in *Danforth v. Minnesota*, 552 U.S. 264 (2008), the Supreme Court held that federal law does not prohibit the states from applying new rules retroactively, this Court "follows *Teague* as a general matter of state habeas practice." *Ex parte De Los Reyes*, 392 S.W.3d at 679. The State sees no reason for this Court to deviate from its practice to follow *Teague.*

In *Ex parte Oranday-Garcia*, 410 S.W.3d 865 (Tex. Crim. App. 2013), this Court held that an application should be dismissed if the new law invoked by the applicant cannot be retroactively applied to the applicant's final conviction. *Id.* at 868. However, because *Moon* should not be retroactively applied, Applicant's claim can never be decided on the merits and it should be denied. *Ex parte Grigsby*, 137 S.W.3d at 674.

E. The transfer order in this case was sufficient.

Finally, as shown in the State's answer, the transfer order in this case was sufficient. Relief should be denied.

PRAYER

The State prays that this Court will deny habeas relief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the State's brief is 8,747 words, as counted by Word Perfect 6X, which is less than the 15,000 word limit for a brief on the merits.

/s/ Gail Kikawa McConnell
Gail Kikawa McConnell

CERTIFICATE OF SERVICE

I hereby certify that a copy of the State's brief on the Court's orders was served by e-serve May 25, 2017, on Mr. Clayton Matheson, Attorney for Applicant, <cmatheson@akingump.com. and on Ms. Stacey Soule, State Prosecuting Attorney, <Stacey.Soule@spa.texas.gov>.

/s/ Gail Kikawa McConnell
Gail Kikawa McConnell

Appendix A

No. 10-DCR 050236A HC2
No. 08-DCR-050238 HC233

Ex Parte	&	IN THE 140TH JUDICIAL
	&	
MIGUEL ANGEL NAVARRO	&	DISTRICT COURT OF
	&	
	&	FORT BEND COUNTY, TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW, RECOMMENDATION AND ORDER

Before the Court are Applicant Miguel Angel Navarro's identical post-conviction subsequent applications for writs of habeas corpus following his convictions for murder and aggravated assault. The Court takes judicial notice of the appellate record of the certification hearing, the suppression hearing, the jury trial, the appeal, and the first post-conviction applications for habeas corpus relief. Having reviewed Applicant's and the State's numerous briefs, and having heard their arguments at the hearings, the Court now makes the following findings of fact and conclusions of law in support of its recommendation and order.

FINDINGS OF FACT

Procedural History

1. The following judges served at the indicated stages in this matter:
   a. The Hon. Walter McMeans, Judge of County Court Law No. 2 for Fort Bend County, sitting as a Juvenile Court, presided over the certification hearing and issued the waiver of jurisdiction and transfer order in

question. Judge McMeans passed away on July 23, 2012.

b. The Hon. Thomas Culver III, Judge of the 240th District Court, presided Over the jury trial in the underlying case. Judge Culver passed away on September 4, 2015.

c. The Hon. Chad Bridges was appointed to succeed Judge Culver as Judge of the 240th District Court, and issued the Order Designating Issues on December 23, 2015.

d. The Hon. Lee Duggan, Jr., Retired Justice, First Court of Appeals, was assigned to hear the Subsequent Applications on March 30, 2016.

Applicant's Attorneys

2. Attorneys Maggie Jamarillo and Eduardo Franco represented Applicant in the juvenile court waiver and transfer proceedings, and in trial in the district court.
Attorney Stephen A. Doggett represented Applicant on appeal to the 1st Court of Appeals, prepared and filed Applicant's first and subsequent writ applications, and represented Applicant on the first writ application.
By agreement, Attorney Doggett was relieved and succeeded by attorneys Clayton N. Matheson, Katharine S. Fraser, Nicole M. McNeel, and Andrew R. Casillas of the San Antonio office of Akin Gump Strauss Hauer & Feld L.L.P. for the subsequent writ application.

In the Juvenile Court

3. Applicant was born March 28, 1992, and was 15 years old when he was charged with a murder and two aggravated assaults, allegedly committed on December 27, 2007. Because of his age, the juvenile court had exclusive

jurisdiction over his three cases. Tex. Family Code Ann Sec. 54.02 [1 MCR[1] 142-149].

4. On September 30, 2008, when Applicant was 16 years old, the juvenile court conducted a waiver and transfer hearing, heard evidence, and waived jurisdiction and transferred Applicant's three cases to this District Court. [1 MCR 1 at 142-49]

In the District Court

5. A grand jury indicted Applicant for the three offenses committed on or about December 27, 2007, when Applicant was fifteen years old. [MCR at 138, ACR at 128, 2 JRR 8].

6. A jury found Applicant guilty of the murder of Matthew Haltom and the aggravated assault of Joe Eodice and not guilty of the aggravated assault of Joel Arnold [15 RR 62]. The jury assessed punishment at 99 years imprisonment for the murder and 20 years imprisonment for the aggravated assault. [26 RR 32] The trial court sentenced Applicant in accordance with the jury's verdicts on January 28, 2011. [20 RR 1,33; 2MCR at 288-90; ACR at 230-32]. [1]

[1]For ease in reference, the Court refers to the record as follows:

MCR	Clerk's Record in 10-DCR-5236A for murder
ACR	Clerk's Record in 08-DCR-05238 for aggravated assault
JRR	Reporter's Record of the juvenile certification/transfer hearing
MSRR	Reporter's Record of a motion to suppress in the district court
RR	Reporter's Record of the trial in district court

7. Applicant filed motions for new trial on February 28, 2011, which were overruled by operation of law. [2 MCR at 306-07, ACR at 247-48.

In the Court of Appeals

8. The judgments were affirmed. *Navarro v. State,* Nos. 01-11-00139-CR, 01-11-00140-CR, 2012 WL 3776372 (Tex. App. - Houston [1st Dist.] Aug. 30, 2012, pet. ref'd) (not designated for publication). Mandates issued on January 9, 2013.

Applicant's Original Applications
For Writs of Habeas Corpus

9. On April 4, 2014, Applicant filed his original applications for writs of habeas corpus in both cases pursuant to Article 11.07, Code of Criminal Procedure.

10. In Cause No. 10-DCR-050236A HC2, for the murder of Matthew Haltom, Applicant asserted the following grounds:
   a. "I was denied effective assistance of trial counsel because trial counsel failed to object to the omission of a multiple assailants charge." [App. at 6].
   b. "I was denied effective assistance of trial counsel because trial counsel failed to object to my 99 year sentence being cruel and unusual punishment under U.S. Const 8th Amend. or Tex. Const. Art.1.Sec. 13". [App. At 8]".

11. In Cause No. 08-DCR-050238 HC2, for the aggravated assault of Joseph Eodice, Applicant asserted the following ground for relief:
   a. "I was denied effective assistance of trial counsel because trial

counsel failed to object to the omission of multiple assailants charge". [App. At 6].

b. Applicant's trial counsel, Maggie Jaramillo and Eduardo Franco, filed their response affidavits and the Court recommended that relief be denied. The Court of Criminal Appeals denied relief without written orders. *Ex Parte Navarro*, Nos. WR-82. 264-01, WR-82.264-02 (Tex. Crim. App. Nov. 26, 2014).

In Federal Court

12. February 5, 2015, Applicant filed federal petitions for writ of corpus in the United States District Court for the Southern District of Texas, asserting the same ineffective assistance grounds raised in his original state application for writ of habeas corpus. a. Challenging his conviction for murder: (1) "trial counsel failed to object to the omission of multiple assailants charge" and (2) "trial counsel failed to object to 99-year sentence being cruel and unusual under the 8th Amendment because Petitioner was 15 at the time of the offense." *Navarro v. Davis*, No. 4-15-cv-00352 (S.D. Tex) (petition at 6). b. Challenging his conviction for aggravated assault: "trial counsel failed to object to omission of defense against multiple assailants charge" *Navarro v. Davis*, No. 4:15-cv-00352 (S.D. Tex.) (petition at 6).

On October 1, 2015, Applicant's federal petitions were consolidated In Cause No. 4-15-cv-00352. On June 9, 2016, the proceeding was stayed for the exhaustion of claims asserted in Applicant's subsequent applications herein.

The Second, or Subsequent,
Applications for Habeas Corpus

13. On November 19, 2015, Applicant filed his second or subsequent

applications for writs of habeas corpus, asserting the following identical grounds for relief:

Ground One

"The transfer order did not set out sufficient facts to justify the transfer per *Moon*. This denied appellant [sic] due process and deprived the district court of jurisdiction." [App. At 6].

Ground Two

"New scientific evidence not available at trial renders key State's scientific expert testimony false. Had new evidence been presented, applicant would not have been convicted." [App. At 8].

14. The State was served with Applicant's applications on November 20, 2015.

15. The State filed its answers on December 7, 2015.

16. On December 23, 2015, the habeas court entered its "Order Designating Issues", designating the following issues to be resolved:

"1. Whether the current claims and issues have not been and could not have been presented previously in the Applicant's application because the factual or legal basis for the claim was unavailable on the date the applicant filed his previous application".

"2. Whether the Applicant can waive error in an invalid and/or insufficient transfer order".

Issue One

17. Both the habeas court's Order Designating Issues and Applicant's Ground One (each stated verbatim above) focus on whether these subsequent writ applications have complied with the jurisdictional requirements of Texas Code of Criminal Procedure Art. 11.07, Section 4, and Texas Family Code Section 54.02 (h).

Article 11.07, Section 4 provides in pertinent part:

Section 4. (a) if a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of, or grant relief based on, the subsequent application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application. . . .

* * * *

(b) For purposes of Subsection (a) (1), a legal basis of a claim is unavailable on or before a date described by Subsection (a) (1) if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date. Tex. Code Crim. Proc. Art, 11.07, Sec. 4 (West 2015).

(2) Article 54.02 (h) states in pertinent part that if the juvenile court waives Jurisdiction, "it shall state specifically in the order its reasons for transfer.

The Factual Basis Allowing Consideration
Of Applicant's Subsequent Application

18. Applicant's first applications for writs of habeas corpus (alleging only ineffective assistance of counsel) were denied by the Court of Criminal Appeals on November 26, 2014. *Ex Parte* Navarro, WR-82-264-01 and

WR-82-264-02 (Tex Crim. App. November 26, 2014).

19. On December 10, 2014, the Court of Criminal Appeals issued its decision in *Moon v. State*, 451 SW3d 28 (Tex. Crim. App. 2014) establishing critical new precedent regarding requirements for juvenile certification and transfer orders under the Texas Family Code. Therefore, the legal basis for this claim "was unavailable on the date applicant filed the previous applications". Art. 11.07, Sec. 4 (a) (1).

Could Applicant Have Reasonably Formulated *Moon's* "Show Your Work" Requirement For Transfer Orders From *Kent* or The Plain Language of Section 54.02?

The State urges that the legal basis for *Moon's* holding could have been reasonably formulated from *Kent v. United States,* 360 U.S. 541 (1966) and the plain language of Sec. 54.02.

20. *Kent v. U.S.*, 383 U.S. 561 (1966), a District of Columbia case, involved a Juvenile court's certification and order in a case where a juvenile was tried as an adult without the juvenile court holding a hearing or otherwise conferring with the juvenile, his parents, or his counsel. 383 U.S. at 546. The *Kent* decision held the entire transfer process insufficient.

As to transfer orders, *Kent* said:

"Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions. It must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant

facts. It may not 'assume' that there are adequate reasons, nor may it merely assume that 'full investigation' has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of 'full investigation' has been met; and that the question has received the careful consideration of the

the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review."
Kent, 383 U.S. at 561.

21. *Kent* did observe that the District of Columbia juvenile court "must accompany its waiver order with a statement of the reasons or considerations therefor". ID. at 561. However, *Kent* did not clarify or address the specificity required for such orders, or the use of form orders containing conclusory findings without citing underlying evidence, such as the order in the case before us. Further, Texas courts of appeals practice would cloud the issue

22. Before *Moon*, Texas juvenile judges habitually issued form orders that offered little insight into the reasons for the transfer determinations. Some juvenile offenders even urged Kent as authority to argue that such form orders were improper, but Texas courts of appeals disagreed as a matter of practice. See e.g., *Matter of T.L.C.*, 948 SW2d 41-44 (Tex. App.—

Houston [14th Dist.] 1997 no writ) (rejecting the argument that a form order which merely "parrot[ed]" the statutory considerations mandated by 54.02(h) and *Kent*, and holding that "the fact that the order parrots the required statutory considerations does not render it infirm"). See also *Matter of T.D.*, 817 SW2d 771, 776-77 (Tex. App.-- Houston [1st Dist.] 1991 Writ denied)(concluding that under Section 54.02, the juvenile court was not required to specify its reasons in certification orders); In re I.B., 619 S.W.2d 584, 587 (*Tex. App.* -- Amarillo 1981, no writ) ("[Section 54.02] does not preclude 'form orders' and does not require a statement of the factual reasons for waiver."); *Appeal of B.Y.*, 585 S.W.2d 349, 351 (Tex. App. -- El Paso 1979, no writ) ("Reversible error is not present here by the fact that the Court's order seems to parrot the Section 54.02 list of factors the Court should consider in making a transfer . . . "). Despite *Kent*, this practice persisted until *Moon*.

As one legal commentator explained:

> "If the juvenile court waives jurisdiction, the statute directs it to 'state specifically' in a written order 'its reasons for waiver . . . and findings of the court.' That was the theory. The reality proved different. Between 1997 and 2008, juvenile courts in Harris County certified 1,524 children as adults and denied the state's certification requests only 83 times – a certification rate of 95 percent. Courts typically held only abbreviated hearings and used form orders making the same stock findings in every case. Some of those findings had no apparent relation to the ultimate question of whether the welfare of the community required criminal proceedings. Far from being reserved for exceptional cases, certificate – when requested by the state - was virtually automatic." Jack Carnegie, "Juvenile Justice: A look at how one case changed the certification process" Texas Bar J. at 867 (Dec. 2015).

23. The dissent in *Moon* (totally apart from the merit of either the majority or

the dissent in the opinion), suggests the unreasonableness an attorney or juvenile applicant would have in relying upon *Kent,* or the mandates of Articles 11.07, sec. 4(b) and Art. 54.02(h) before *Moon's* issuance:

> "For almost forty years, the tendency among courts of appeals has been to hold that a juvenile transfer order need not specify in detail the facts supporting the order. The Court of Appeals in this case broke ranks with the weight of that authority, and this Court now goes along with the court of appeals' unconventional holding."

24. Based on all of the above, in summary:
    (1) The *Kent* opinion did not clarify or address the specificity required for transfer orders, or address the use of form orders;
    (2) historically, during the 38 years between *Kent* and *Moon*, many Texas courts of appeals have habitually approved juvenile courts' use of form transfer orders; and
    (3) throughout this 38 year period, *Kent* was urged and ignored by Texas courts of appeals, along with Article 11.07, Sec.4(b); and Family Code Art. 54.02 (h).

For these reasons, Applicant could not have reasonably formulated *Moon's* "show your work" instruction to juvenile courts from *Kent*, or Article 11.07, Sec. 4(b), or from Article 54.02(h).

Jurisdiction---And whether Applicant Can Waive Error in an Invalid and/or Insufficient Transfer Order

25. Ground One is a challenge to the subject-matter jurisdiction of the district court that presided over Applicant's criminal trial. Texas law is clear that such a fundamental challenge cannot be waived --- and can be asserted

at any time. *Alfonso v. Skadden*, 251 S.W.3d 52 (Tex. 2008); see also *Ex parte Moss*, 446 S.W.3d 786, 788 (Tex Crim. App. 2014) (stressing that subject-matter jurisdiction is a systematic requirement that appellate courts must review whether or not the parties have raised the issue); *U.S. v Cotton*, 535 U.S. 625, 630 (2002) ("[S]ubject -matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived."); *Puente v. State,* S.W. 3d 340, 342 (Tex Crim. App. (2002). ("[A]s a general proposition a total lack of subject-matter Jurisdiction cannot be waived."): *Garcia v. Dial*, 596 S.W.2d 524,526 (Tex. Crim. App. 1980) (emphasizing that even the defendant's consent cannot remedy a lack of subject-matter jurisdiction. A district court judgment can never be "final" where, as here, the issuing court lacked subject-matter jurisdiction. *See e.g., Guerrero* 471 S.W.3d at 4 (vacating a criminal conviction after concluding that the district court never acquired subject-matter jurisdiction because the underlying juvenile court's transfer order was invalid under *Moon*). Indeed, a judgment rendered by a court that lacks a subject-matter jurisdiction is automatically void. *Nix v.* State, 65 S.W.3d 664, 668 (Tex. Crim. App. 2001).

26. Based on the above authorities, the answer to Issue Two to the Order Designating Issues is that an Applicant <u>cannot</u> waive error in an invalid and/or insufficient transfer order.

27. The Juvenile Justice Code expressly provides that "the juvenile court has exclusive original jurisdiction over proceedings" involving juvenile offenders. Tex. Fam. Code 51.04(2); see also *Matter of C.B.* 2015 WL 4448835, at *2 (Tex. App.—Austin July 15, 2015, no pet.) (holding that under Sec. 51.04(a) (West 2014), the juvenile court "had subject-matter jurisdiction to conduct the release or transfer hearing.").

This exclusive jurisdiction may pass to a district court only pursuant to a valid transfer order under Sec. 54.02). Otherwise, a district court never acquires subject matter jurisdiction, and any judgments or convictions it enters are void. As the *Moon* court stated, "[t]he juvenile court has either validly waived its exclusive jurisdiction, thereby conferring jurisdiction on the criminal court, or it has not. *Moon*, 451 S.W.3d 28, 52 n.90. "Because the juvenile court has exclusive original jurisdiction for crimes committed by a person less than 17-years of age at the time of commission of the offense without a valid transfer there is no jurisdiction in the adult court, and a claim of lack of jurisdiction can be raised at any time, even by collateral attack." George Dix and John Schmolesky, Texas Practice Series: Criminal Practice and Procedure Sec. 4:1 (3d ed. Nov. 2015). (Cited in State's Request For Findings of Fact & Conclusion of Law, filed June 28, 2016 page 5).

Personal Jurisdiction Is Not An Issue

28. The State argues that Sec. 54.02 transfer orders involve transfers of personal jurisdiction, not subject-matter jurisdiction, and that Applicant waived his Ground One by failing to assert it on direct appeal. (State's Request For Findings of Fact and Conclusions of Law, Filed on June 28, Pages 5-6). The Court disagrees.
Texas Practice Series Criminal Practice and Procedure, cited above, states: "Jurisdiction is used in a number of different senses, including reference to the relationship between the case and the defendant—personal jurisdiction. For example, the defendant must be present at the beginning of his or her trial for the trial court to have personal jurisdiction over that person, and to enter a binding judgment in the case... An example of a personal jurisdiction issue is the requirement of a

proper juvenile court hearing for a juvenile whose age and crime make the defendant eligible for transfer to an adult court for a criminal trial." Id.

Personal jurisdiction is not in dispute here. There is no dispute that Applicant, who lived and committed the underlying offenses in Fort Bend County, was subject to the personal jurisdiction of the Fort Bend County Court. It is further undisputed that Applicant was present at the beginning and throughout the juvenile court's transfer proceeding, as well as at the district court.

Code of Crim. Procedure Art 4.18 Does Not Preclude Applicant's Ground One

29. The State next urges that Code of Criminal Procedure Art. 4.18 bars consideration of Applicant's Ground One because Applicant failed to challenge the juvenile court's transfer order by filing a motion before his district court trial. (State's Request For Findings of Fact and Conclusions of Law, Filed June 28, 2016, pages 5-6).

Art. 4.18 states, in relevant part:

"A claim that a district court or criminal district court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court and that the juvenile court could not waive jurisdiction under Section 8.07(a), Penal Code, or did not waive jurisdiction under Section 8.07(b), Penal Code, must be made by written motion in bar of prosecution filed with the court in which criminal charges against the person are filed." (Emphasis added).

30. Article 4.18 applies only to claims that a district court "does not have Jurisdiction over a person because . . . the juvenile court could not

waive jurisdiction under Section 8.07(a), Penal Code, or did not waive

jurisdiction under Section 8.07(b), Penal Code. Tex. Code Crim. Proc. Art.4.18 Sec. (a). (Emphasis added).

31. Applicant does not contend that the juvenile court either did not or could not waive its jurisdiction over his criminal cases. Rather, Applicant contends the juvenile court, in waiving its jurisdiction, did so pursuant to an invalid order. (Emphasis added). (Applicant's [Proposed] Findings of Facts, etc., Filed July 15, 2016, page 9).

29 Tex. Prac., Juvenile Law & Prac., Sec. 23:14 (3d ed.) states: "Article 4.18 . . . essentially says that when a juvenile is tried in an adult court, the juvenile cannot wait until after the trial to inform the judge that he is under age and has not been certified to stand trial as an adult."

Applicant Navarro's Transfer Order---And Its Deficiencies

SEE EXHIBIT A (BEHIND PAGE 21)

32. The Court bases its findings of deficiencies on *Moon*, in which the Court of Criminal Appeals addressed Section 54.01(h)'s requirement that "[i]f the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver." The *Moon* court added that:

> The fact that the Legislature changed 'briefly state' as drafted by the committee that drafted the Juvenile Code recommended to 'state specifically' indicates that it contemplated more than merely an adherence to printed forms and, indeed, contemplated a true revelation of reasons for making this discretionary decision. Moreover, Section 54.02(h) obviously contemplates that both the Juvenile court's reasons for waiving its jurisdiction and the findings of fact that undergird those reasons should appear in the transfer

order. Id. (Emphasis added).

33. *Moon* further stressed that in reviewing a juvenile certification, an appellate court "should not be made to rummage through the record for facts that the juvenile court might have found, given the evidence developed at the transfer hearing, but did not include in its written transfer order." Id. (Emphasis added). The court thus held that a reviewing appellate court may only consider " the facts that the juvenile court expressly relied upon, as required to be explicitly set out in the juvenile transfer order." Id. (Emphasis added).

34. Thus, to be valid under *Moon*, a juvenile transfer order must include specific findings of fact on which the juvenile judge relied in applying the factors set forth in Section 54.02(f). *Moon*, 451 S.W.3d at 47. Those factors include (1) whether the alleged offense was against person or property, (2) the child's sophistication and maturity, (3) the child's record and previous history, 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." TEX. FAM. CODE § 54.02(f).

35. The transfer order in Applicant's case does not contain sufficiently specific fact findings or evidentiary references regarding any of these factors. Indeed, the order's only mention of the third factor is the statement that "[t]he Court also considered the child's age, the record of the child, and the previous history of the child.' Ex.B at 6 (6). The order offers no details about Applicant's record or previous history, nor does it offer any insight into how Applicant's record or previous history affected the juvenile judge's analysis.

36. The following list of four written studies and fifteen recitals by the Court in the transfer order have "show your work" deficiencies under *Moon*.

(1) "[A] diagnostic study and psychological evaluation of [Applicant] was ordered by the Court and was completed and obtained by the Court" [Transfer Order at [p. 2];

(2) "[A] social evaluation and investigation of [Applicant] and the circumstances of the alleged offenses have been completed and provided to the Court" [Transfer Order, at p. 2];

(3) A Social Evaluation, (Certification Hearing). (Exhibit 24);

(4) Recital that "The Court has probable cause to believe that Applicant" intentionally and knowingly caused the death of an individual, MATTHEW HALTOM" [Transfer Order at p. 3];

(5) Recital that "The Court has probable cause to believe that Applicant "intentionally, knowingly, and recklessly caused bodily injury to JOE EODICE by stabbing JOE EODICE with a knife, a deadly weapon." [Transfer Order, at pages 3-4].

(6) Recital that "These offenses were against persons". [Transfer Order at p. 4].

(7) Recital that "[T]he child is not mentally retarded". [Transfer Order at p, 4];

(8) Social Evaluation, [Certification Hearing Exhibit 4];

(9) Recital that" [T]he child is not mentally retarded." [Transfer Order at [p. 4];

(10) Recital that "[T]he child does not as a result of mental disease or defect lack the capacity to understand the proceedings in juvenile court or to assist in his own defense, and, in fact, the child does so understand and has assisted in his defense. [Transfer Order at p. 4];

(11) Recital that "The Child is not mentally ill". [Transfer Order at p. 4];

(12) Recital that "[T]he child does not as a result of mental disease or defect lack substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of society." [Transfer Order at p. 4];

(13) Recital that "[T]he child knows the difference between right and wrong." [Transfer Order at p. 4];

(14) Recital that "The child is sophisticated and mature." [Transfer Order at p.5];

(15) Recital that "The availability of special proceedings in the juvenile court with a possible maximum sentence of forty (40) years as an alternative to discretionary transfer to the criminal court is not a viable option in this instance." [Transfer Order at p. 5);

(16) Recital that "The felony offenses were committed in an aggressive and premeditated manner." [Transfer Order at p. 5];

(17) Recital that "the child's conduct was willful and violent. " [Transfer Order at p. 5];

(18) Recital that "the offenses ere of an aggravated character." [Transfer Order at p. 5];

(19) Recital that "The offenses were so serious to the community that transfer to a district court with criminal jurisdiction must be granted." [Transfer Order at p. 5].

37. Section 54.02, states in pertinent part that the juvenile court "shall state specifically in the [transfer] order its reasons for waiver and certify its action, including the written order and findings of the court." Tex. Fam. Code Sec. 54.02(h). In short, no facts from any of the studies or reports listed. All of the court's recitals are conclusions, apparently based on facts in the record but not stated in the hearing order.

Ground Two

(20) Applicant's Ground Two centers on a scientific study that scientists From the University of Finland published in June 2015 (the "Finland Study").[2] The Finland Study concerns the behavioral effects of painkiller use and aggressive homicidal conduct.

(21) Applicant asserts that the Finland Study directly contradicts critical expert testimony that the prosecution presented during his trial. Applicant's Response to Order Designating Issues at 2. He argues that "had the evidence been available at the time, it completely would

[2] Tiihonen, J., Lehti, Aaltonen M., Kivivouri J.Kautianinen H., Virta L., Hoti F., Tanskanen A., Korhonen P., *Psychotropic Drugs and Homicide: a prospective Cohort Study from Finland,* WORLD PSYCHIATR(June 1, 2015)

have changed his trial strategy and in all likelihood would have led to an acquittal." id.

22. Applicant has not shown that The Finland Study renders [the prosecution expert's] testimony false, that the prosecution relied on [the expert]'s testimony to prove the elements of the offenses, or that The Finland Study would have been admissible at trial. Applicant presented no affidavit from trial counsel to support his argument that "had this new evidence been available at the time, it completely would have changed [Applicant's counsel's] trial strategy and in all likelihood would have led to an acquittal." Applicant's Ground Two is denied.

CONCLUSIONS OF LAW

Ground One

1. The juvenile court failed to "show its work" in its written transfer order, as required under Texas law. Tex. Fam. Code Sec. 54.02(h); *Moon v. State*, 451 S.W.3d 28, 49, (Tex. Crim. App. 2014). Specifically, the juvenile court's transfer order fails to specifically state facts on which the juvenile court based its decision to waive jurisdiction. Id. at 49.

1. The juvenile court's transfer order was therefore invalid. Consequently, the district court to which Applicant was transferred for trial never properly acquired subject-matter jurisdiction over Applicant's case, and the district court's judgment is void. *Nix v, State*, 65 S.W.3d 664, 668 (Tex. Crim. App. 2001).

2. Before *Moon*, Applicant could not have reasonably formulated his

"show your work" instruction to courts of appeals for transfer orders based on *Kent* or the clear language of Article 54.02(h).

3. Applicant's Ground for Relief One is cognizable on application for habeas corpus not as a complaint of no evidence at the transfer hearing, but a complaint of no evidence shown in the transfer order to make a valid order, as required by *Moon*. The existence of evidence at the transfer hearing is not the equivalent of *Moon's* "show your work " in the transfer order to explain the judge's reasoning and reliance on specific evidence.

4. Applicant did not waive his right to challenge the district court's subject-matter jurisdiction, as that is a fundamental challenge that never can be waived. *Alfonso v. Skadden*, 251 S.W.3d 52 (Tex 2008); *Ex parte Moss*, 446 S.W.3d 786, 778, (Tex. Crim. App. 2014); *United States v. Cotton*, 535 U.S. 625 630 (2002); *Puente v. State*, 71 S.W.3d 340, 342 (Tex. Crim. App. 2002); *Garcia v. Dial*, 596 S.W.2d 524, 526 (Tex. Crim. App. 1980).

5. The lack of more specific fact findings in the transfer order in this case rises to the level of a due process violation, which may be collaterally attacked.

6. Applicant is serving a prison sentence imposed by a void judgment from a court that lacked subject-matter jurisdiction, and is thereby being illegally restrained of his liberty, in violation of his rights under Article 1, Section 10, and Article 1, Section 19 of the Texas Constitution, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Exhibit "A"

NO. 13814

IN THE MATTER OF	§	IN THE COUNTY COURT AT LAW NO. 2
	§	
	§	FORT BEND COUNTY, TEXAS
	§	
MIGUEL ANGEL NAVARRO	§	SITTING AS A JUVENILE COURT

WAIVER OF JURISDICTION AND ORDER OF TRANSFER TO A CRIMINAL DISTRICT COURT

On the 23RD day of SEPTEMBER, 2008, personally appeared the Juvenile Respondent, MIGUEL ANGEL NAVARRO, who was duly and properly served by a suitable person under the direction of the Court; his mother, Maria Salazar; his attorney, MAGGIE JARAMILLO; and TYRA JONES McCOLLUM and TRACY GAINES, Assistant District Attorneys, for a hearing on the State's PETITION FOR DISCRETIONARY TRANSFER TO A CRIMINAL DISTRICT COURT OR A DISTRICT COURT FOR CRIMINAL PROCEEDINGS.

The Court finds that in the State's Petition the child is charged with one (1) count of MURDER (F1) and two (2) counts of AGGRAVATED ASSAULT (F2). The Court finds that MIGUEL ANGEL NAVARRO has been served with proper summons stating that the hearing is for the purpose of considering transfer of jurisdiction to the appropriate criminal court.

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Dianne Edwards
CLERK DISTRICT COURT
FORT BEND CO. TX

The Court finds that MIGUEL ANGEL NAVARRO was served with proper summons stating that the hearing is for the purpose of considering transfer of jurisdiction to the appropriate criminal court within the period specified by Texas Family Code Section 51.10(h), however said child announced ready to proceed and waived an additional ten days notice for preparation. The Court finds that the child's parent, Maria Salazar, has been served with proper summons stating that the hearing is for the purpose of considering transfer to the appropriate Criminal Court.

The Court finds that a diagnostic study and psychological evaluation of MIGUEL ANGEL NAVARRO was ordered by the Court and was completed and obtained by the Court.

The Court finds that a social evaluation and investigation of MIGUEL ANGEL NAVARRO and the circumstances of the alleged offenses have been completed and provided to the Court.

After full investigation and hearing, this Court finds that there is probable cause to believe that MIGUEL ANGEL NAVARRO committed the offenses as alleged in the State's PETITION FOR DISCRETIONARY TRANSFER TO A CRIMINAL DISTRICT COURT OR A DISTRICT COURT FOR CRIMINAL PROCEEDINGS. The Court finds that the following offenses are supported by probable cause as alleged in the State's PETITION FOR DISCRETIONARY TRANSFER TO CRIMINAL DISTRICT COURT and have prosecutive merit.

The offense is of the grade of felony; to-wit, a felony of the first degree, MURDER (F1) and is as follows:

That MIGUEL ANGEL NAVARRO, Juvenile Respondent herein, on or about December 27, 2007, in Fort Bend County, Texas, did then and there intentionally and knowingly cause the death of an individual, MATTHEW HALTOM, by stabbing MATTHEW HALTOM with a knife; and that this act is a violation of section 19.02 of the Texas Penal Code.

The offense is of the grade of felony; to-wit, a felony of the second degree, AGGRAVATED ASSAULT and is as follows:

That MIGUEL ANGEL NAVARRO, in Fort Bend County, Texas on or about December 27, 2007, did then and there intentionally, knowingly, and recklessly cause bodily injury to JOE EODICE by stabbing JOE EODICE, and the Respondent did then and there use and exhibit a deadly weapon, to-wit: a knife, during the commission of said assault; and that this act is a violation of section 22.02 of the Texas Penal Code.

The offense is of the grade of felony; to-wit, a felony of the second degree, AGGRAVATED ASSAULT and is as follows:

That MIGUEL ANGEL NAVARRO, in Fort Bend County, Texas on or about December 27, 2007, did then and there intentionally, knowingly, and recklessly cause bodily injury to JOEL ARNOLD by stabbing JOEL ARNOLD, and the Respondent did

then and there use and exhibit a deadly weapon, to-wit: a knife, during the commission of said assault; and that this act is a violation of section 22.02 of the Texas Penal Code.

The Court finds beyond a reasonable doubt that the child was 14 years of age or older at the time of the alleged first degree offense and second degree offenses for which the Court found probable cause: MURDER (F1) and AGGRAVATED ASSAULT (F2) (TWO (2) COUNTS); and that the current age of the child is 16 years of age.

The Court finds that no adjudication hearing has been conducted concerning any of the offenses for which the Court found probable cause.

The Court finds by a preponderance of the evidence, that said listed offenses were against persons.

Further, the Court makes the following additional findings:

The Court finds the following by a preponderance of the evidence: (a) the child is not mentally retarded; (b) the child does not as a result of mental disease or defect lack the capacity to understand the proceedings in juvenile court or to assist in his own defense, and in fact, the child does so understand and has assisted in his defense; (c) the child is not mentally ill; (d) the child does not as a result of mental disease or defect lack substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of society; and (e) the child knows the difference between right and wrong.

The Court has determined in its own mind that the child is sophisticated and mature. The Court finds that the likelihood of rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile court is not a viable alternative in this case. The Court also finds that because of the seriousness of the offenses, the welfare of the community requires criminal proceedings instead of juvenile proceedings, which will also aid in the protection of the public.

The Court has determined that the availability of special proceedings in the juvenile court with a possible maximum sentence of forty (40) years as an alternative to discretionary transfer to the criminal court is not a viable option in this instance.

The Court also finds by a preponderance of the evidence:

(a) The felony offenses were committed in an aggressive and premeditated manner.

(b) The child's conduct was willful and violent.

(c) The offenses were of an aggravated character.

(d) The offenses were so serious to the community that transfer to a district court with criminal jurisdiction must be granted.

(e) The age and circumstances of this child indicates that the likelihood of rehabilitation by the use of procedures, services, and facilities currently available to the juvenile court is not a viable option in this case.

(f) There is probable cause to believe that the child before the Court committed each of the offenses certified by the Court as allege in the State's PETITION FOR DISCRETIONARY TRANSFER TO CRIMINAL DISTRICT COURT.

(g) Because of the seriousness of the offenses alleged and the background of the child, the welfare of the community requires criminal proceedings.

The Court also considered the child's age, the record of the child, and the previous history of the child, and the prospects of adequate protection of the public.

After a full investigation and hearing, the Court finds that it should certify MIGUEL ANGEL NAVARRO as an adult and waive its exclusive original jurisdiction and transfer this child and these proceedings to the District Court of Fort Bend, County, Texas, for criminal proceedings and to be dealt with as an adult and in accordance with the Code of Criminal Procedure and the rules prescribed therein for such purpose.

Therefore, the child is certified as an adult to stand trial as to the certified offenses alleged in the State's PETITION FOR DISCRETIONARY TRANSFER TO CRIMINAL DISTRICT COURT.

Therefore, MIGUEL ANGEL NAVARRO will be remanded immediately to the Fort Bend County Jail facility for further detention and processing.

THEREFORE, by reasons of the foregoing I, JUDGE WALTER S. McMEANS, of the County Court at Law No. 2 of Fort Bend County, Texas, Sitting as a Juvenile Court, hereby waive jurisdiction of this cause and transfer the said Juvenile Respondent, MIGUEL ANGEL NAVARRO, to the appropriate District Court of Fort Bend County, Texas, for proper criminal proceedings and do hereby certify said action.

Included herein and made a part of the waiver of jurisdiction, transfer, and certification is this written Order, the same being the findings of the Judge of the County Court at Law No.2 of Fort Bend County, Texas, Sitting as a Juvenile Court and said certification, transfer, and waiver is accompanied by complaint against the Juvenile Respondent accusing him of a felony offenses.

The Court advised the Juvenile Respondent, and the Juvenile Respondent's parent, and the Juvenile Respondent's attorney of the juvenile's right to appeal and that if he could not afford an attorney for appeal, the appropriate Court would appoint one, and the Court would pay for the juvenile record. Any such appeal and Court appointment of an attorney therefore, will be available to the Juvenile Respondent as the law provides under the Code of Criminal Procedure as an adult. The Court advised of additional appeal rights and instructed the juvenile's attorney to advise the Juvenile Respondent and his parent in more detail of the appellate process and rights as to the Transfer Hearing. The Court advised MIGUEL ANGEL NAVARRO of any right he

may have to seal his juvenile record and provided him with a copy of Section 58.003 of the Texas Family Code.

IT IS FURTHER ORDERED AND DECREED by the said County Court at Law No.2 of Fort Bend County, Texas, sitting as a Juvenile Court, that the clerk of said Court transmit forthwith to the proper District Court of Fort Bend County, Texas, this written Order and findings of the said County Court at Law No. 2 of Fort Bend County, Texas, sitting as a Juvenile Court.

SIGNED this 30 day of September 2008.

Honorable WALTER S. McMEANS
Judge of the County Court at Law No. 2
Fort Bend County, Texas
Sitting as a Juvenile Court

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2008 OCT 27 PM 2:17
Rene Rebecca Ellison
CLERK DISTRICT COURT
FORT BEND CO. TX

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2008 SEP 30 PM 1:34

8

FEND
County Clerk of Fort Bend County, Texas,
I hereby certify that the foregoing is a true and correct copy
of the documents on file and recorded in the appropriate records.
Note: A portion of a personal identifying number may have been
redacted as allowed by law. October 27, 2008 Date

Dianne Wilson, County Clerk
Fort Bend County, Texas

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RECOMMENDATION

Based on the foregoing , having reviewed the parties' multiple submissions and considered the arguments of counsel, the Court recommends that the Court of Appeals **grant** Applicant's writs of habeas corpus relief, overturn his two underlying convictions, and remand his cases to the juvenile court for further proceedings.

ORDER

The Clerk of this Court hereby is ORDERED to send to the Court of Criminal Appeals on or before August 31, 2016 copies of the application for writ of habeas corpus and supporting memoranda, the State's answer the Court's Order Designating Issues, the parties' briefs in response to those issues, and the parties' various other submissions (including their proposed findings of fact and conclusions of law), along with these Findings of Fact, Conclusions of Law, Recommendation, and Order, and then to send these Findings of Fact, Conclusions of Law, Recommendation, and Order to Applicant's attorney, Clayton N. Matheson, and the State's attorney, Gail K. MConnell.

Signed on August 31, 2016

Lee Duggan, Jr.

Lee Duggan, Jr., Retired Justice
1st Court of Appeals
Assigned Judge
240th District Court

Appendix B

FILED P15
Chris Daniel
District Clerk
FEB 09 2016
Time: Harris County, Texas
By Deputy

NO. 1395747-A

EX PARTE	§	IN THE 177TH DISTRICT COURT
	§	OF
ALVIN RIGGINS, Applicant	§	HARRIS COUNTY, TEXAS

STATE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Having reviewed the application for writ of habeas corpus (including the attached exhibits); the State's answer (including all attached exhibits); the reporter's record from the motion to dismiss and plea hearing on June 4, 2015; the juvenile court records connected to cause number 2010-03339J; and the official trial court records in cause numbers 1275497, 1395747, and 1410506, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On May 5, 2010, the State filed a petition alleging that the applicant, whose date of birth was May 15, 1994, engaged in delinquent conduct by committing the murder of complainant Tron Carruth on or about April 5, 2010, in Harris County, Texas, and seeking adjudication of delinquency in cause number 2010-03339J.
2. On July 9, 2010, the State filed an amended petition and motion to waive jurisdiction both of which alleged that the applicant engaged in

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delinquent conduct by committing the murder of complainant Tron Carruth on or about April 5, 2010, in Harris County, Texas, and seeking a waiver of jurisdiction and discretionary transfer to criminal court in cause number 2010-03339J Amended.

3. On August 24, 2010, the juvenile court – the 315th District Court of Harris County, Texas – conducted a hearing after ordering and obtaining "a diagnostic study, social evaluation, a full investigation of the child, HIS circumstances, and the circumstances of the alleged OFFENSE" and then signed an order waiving jurisdiction in case number 2010-03339J Amended which related to the murder committed on or about April 5, 2010, and made this determination considering among other matters: (a) whether the alleged OFFENSE WAS against person or property, with the greater weight in favor of waiver given to offenses against the person; (b) the sophistication and maturity of the child; (c) the record and previous history of the child; and (d) the prospects of adequate protection of the public and the likelihood of reasonable rehabilitation of the child by use of procedures, services and facilities currently available to the Juvenile Court.

4. On August 25, 2010, (a) a felony criminal complaint alleging the murder of complainant Tron Carruth committed on or about April 5, 2010, was filed against the applicant in cause number 1275497 and (b) the adult criminal court – 177th District Court of Harris County, Texas – pursuant to the waiver of jurisdiction by the juvenile court, assumed jurisdiction over the applicant for the felony offense of murder originally filed under case number 2009-03339J AMENDED.

5. On November 18, 2010, the applicant was indicted for the murder of complainant Tron Carruth committed on or about April 5, 2010, in cause number 1275497.

6. On November 30, 2012, the adult criminal court, pursuant to the State's motion (which expressly reserved the right to refile the case), dismissed cause number 1275497.

7. On July 25, 2013, the applicant was indicted for the murder of complainant Tron Carruth committed on or about April 5, 2010, in cause number 1395747.

8. On December 5, 2013, a felony criminal complaint alleging the offense of delivery of a controlled substance committed on or about December 4, 2013, was filed against the applicant in cause number 1410506.

9. On March 12, 2014, the applicant was indicted for the felony offense of delivery of a controlled substance committed on or about December 4, 2013, in cause number 1410506.

10. On December 10, 2014, the Court of Criminal Appeals delivered its opinion in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014).

11. On December 23, 2014, the Fourteenth Court of Appeals delivered its opinion in *Guerrero v. State*, 471 S.W.3d 1 (Tex. App. – Houston [14th Dist.] 2014, no pet.)(mem. op.). The applicant's habeas counsel, Cheri Duncan, represented Guerrero in this appellate proceeding.

12. On June 3, 2015, (a) the applicant filed, among other motions, a motion to dismiss for lack of subject matter jurisdiction and (b) the adult criminal court impaneled a jury in cause number 1395747.

13. On June 4, 2015, (a) the adult criminal court conducted a hearing on the defense motion to dismiss for lack of subject matter jurisdiction and, after receiving caselaw and arguments by counsel for the State and defense, denied the defense motion; (b) the applicant (i) pled guilty to the murder of complainant Tron Carruth committed on or about April 5, 2010, in cause number 1395747, (ii) waived his right to appeal, and (iii) expressly stipulated in the written judicial confession

that in "exchange for the agreed sentence of 5 years TDC, I understand that I am waiving the right to appeal any and all complaints about the proceedings in the Criminal District Court or the juvenile district court, and am waiving all claims of defects or deficiencies in the Order to Waive Jurisdiction, Order of Discretionary Transfer, and certification orders that resulted in the transfer of this case to the Criminal District Court."; (c) the adult criminal court assessed punishment, pursuant to an agreed punishment recommendation, at five years confinement in the Texas Department of Criminal Justice – Institutional Division; and (d) the adult criminal court, pursuant to State's motion, dismissed cause number 1410506.

14. On September 11, 2015, the applicant's habeas counsel, Cheryl Duncan – who argued the applicant's motion to dismiss for lack of subject matter jurisdiction during the guilt stage of trial in cause number 1395747 – was appointed to represent the applicant and filed an application for writ of habeas corpus, cause number 1395747-A, challenging his conviction in cause number 1395747 on the grounds that the adult criminal court lacked subject matter jurisdiction over the applicant.

15. The applicant had multiple available options allowing him to challenge the instant habeas issues raised in the defense motion to dismiss for lack of subject matter jurisdiction on direct appeal, but instead, chose to plead guilty to the first degree felony offense of murder in exchange for an agreed punishment recommendation of five years in prison and to waive his right to appeal.

16. The applicant was aware of the legal precedent established in the Court of Criminal Appeals' decision in *Moon* and the Court of Appeals' decision in *Guerrero* as of June 4, 2015, the date of the hearing on the defense motion to dismiss for lack of subject matter jurisdiction and the applicant's guilty plea in cause number 1395747.

17. The dismissal of the indictment for murder pursuant to the State's motion in cause number 1275497 on November 30, 2012, had no impact or effect, legal or otherwise, on the juvenile court's waiver of jurisdiction entered on August 24, 2010.

18. The applicant has not presented any legal authority which established that the jurisdictional waiver form in *Moon* was void or allowed a habeas applicant to challenge on habeas the sufficiency and specificity of a jurisdictional waiver order from a juvenile court.

19. The applicant has not presented any legal authority reflecting that the State had a duty to obtain a new or additional waiver of jurisdiction from the juvenile court after the juvenile court's waiver of jurisdiction on August 24, 2010, because the applicant was nineteen years of age when the State indicted the applicant for murder in cause number 1395747 on July 25, 2013.

CONCLUSIONS OF LAW

1. Although the juvenile court – 315th District Court of Harris County, Texas – had exclusive original jurisdiction over the applicant in relation to the murder of Tron Carruth committed on or about April 5, 2010, the juvenile court properly waived its jurisdiction in accordance with Section 54.02 of the Family Code.
2. The adult criminal court – 177th District Court of Harris County, Texas – acquired jurisdiction after the juvenile court waived its exclusive original jurisdiction on August 24, 2010.
3. Since the applicant challenged the subject matter jurisdiction of the trial court during the guilt stage of the trial in cause number 1395747 but did not raise this claim on direct appeal, then the applicant

procedurally defaulted on this issue. *Ex parte Goodman*, 816 S.W.2d 383, 385 (Tex. Crim. App. 1991); *Ex parte Banks*, 769 S.W.2d 539, 540 (Tex. Crim. App. 1989)(op. on reh'g).

4. The applicant's complaint that the juvenile court failed to properly waive jurisdiction is actually a sufficiency challenge to the juvenile court's waiver order which is not cognizable on habeas. *Ex parte Williams*, 703 S.W.2d 674, 678 (Tex. Crim. App. 1986).

5. The applicant's complaint about the sufficiency of the evidence supporting the juvenile court's waiver of jurisdiction and the specificity of the findings contained in the waiver order should have been raised – like in *Moon* and *Guerrero* – on direct appeal.

6. The applicant fails to establish that his complaint concerning the juvenile court's failure to properly waive jurisdiction rises to the level of a jurisdictional defect.

7. After the juvenile court waived jurisdiction over the applicant in relation to the murder of Tron Carruth committed on or about April 5, 2010, alleged in the transfer petition, the adult criminal district court obtained and maintained jurisdiction over the applicant in relation to this murder. TEX. FAMILY CODE § 54.02(i) (West 2009).

8. The State's dismissal of cause number 1275497 had no impact on the State's ability to secure the subsequent indictment and prosecute the applicant for the murder of Tron Carruth in cause number 1395747. *Ex parte Allen*, 630 S.W.2d 693, 695 (Tex. App. – Houston [1st Dist.] 1981, pet. ref'd).

9. Even though the applicant was nineteen years old when the indictment in cause number 1395747 was returned, the State was not required to secure an additional waiver of jurisdiction based on the factors established in Section 54.02(j) of the Family Code regardless of the fact that the State dismissed the indictment in cause number 1275497 which was returned after the juvenile court waived jurisdiction based on the factors in Section 54.02(a) and (f) when the applicant was sixteen years old.

10. The applicant has failed to prove that his conviction was improperly obtained was improperly revoked.

Accordingly, it is recommended that the Court of Criminal Appeals deny the habeas relief requested.

ORDER

THE CLERK IS ORDERED to prepare a transcript of all papers in cause number 1395747-A and transmit same to the Court of Criminal Appeals as provided by TEX. CRIM. PROC. CODE art. 11.07 § 3 (West 2015). The transcript shall include certified copies of the following documents:

A. the application for writ of habeas corpus (including all attached exhibits);

B. the State's answer (including all attached exhibits);

C. the Court's order;

D. the felony criminal complaint, indictment, judgment and sentence, and docket sheets in cause number 1395747;

E. the "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession" and trial court's written admonishments in cause number 1395747;

F. the reporter's record from the motion to dismiss and plea hearing conducted on June 4, 2015, in cause number 1395747;

G. the delinquency petition, amended delinquency petition, motion to waive jurisdiction, and waiver of jurisdiction order related to cause number 2010-03339J;

H. the felony criminal complaint, indictment, dismissal order, and docket sheets in cause number 1275497;

I. the felony criminal complaint, indictment, dismissal order, and docket sheets in cause number 1410506;

J. the State's Proposed Findings of Fact, Conclusions of Law and Order; and

K. the applicant's Proposed Findings of Fact, Conclusions of Law and Order (if any).

THE CLERK is further ORDERED to send a copy of this order to counsel for the applicant, Cheri Duncan, 1201 Franklin, 13th Floor, Houston, Texas 77002; and to counsel for the State, Baldwin Chin, 1201 Franklin, Suite 600, Houston, Texas 77002.

By the following signature, the Court adopts the State's Proposed Findings of Fact, Conclusions of Law and Order in Cause Number 1395747-A.

Signed on this 14 day of March, 2016.

PRESIDING JUDGE, 177TH DISTRICT COURT
HARRIS COUNTY, TEXAS

Appendix C

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 3. Juvenile Justice Code (Refs & Annos)
Chapter 51. General Provisions (Refs & Annos)

This section has been updated. Click here for the updated version.

V.T.C.A., Family Code § 51.04

§ 51.04. Jurisdiction

Effective: September 1, 2001 to August 31, 2013

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person engaged in the conduct, and, except as provided by Subsection (h), the juvenile court has exclusive original jurisdiction over proceedings under this title.

(b) In each county, the county's juvenile board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to Subsections (c) and (d) of this section.

(c) If the county court is designated as a juvenile court, at least one other court shall be designated as the juvenile court. A county court does not have jurisdiction of a proceeding involving a petition approved by a grand jury under Section 53.045 of this code.

(d) If the judge of a court designated in Subsection (b) or (c) of this section is not an attorney licensed in this state, there shall also be designated an alternate court, the judge of which is an attorney licensed in this state.

(e) A designation made under Subsection (b) or (c) of this section may be changed from time to time by the authorized boards or judges for the convenience of the people and the welfare of children. However, there must be at all times a juvenile court designated for each county. It is the intent of the legislature that in selecting a court to be the juvenile court of each county, the selection shall be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare and that changes in the designation of juvenile courts be made only when the best interest of the public requires it.

(f) If the judge of the juvenile court or any alternate judge named under Subsection (b) or (c) is not in the county or is otherwise unavailable, any magistrate may make a determination under Section 53.02(f) or may conduct the detention hearing provided for in Section 54.01.

(g) The juvenile board may appoint a referee to make determinations under Section 53.02(f) or to conduct hearings under this title. The referee shall be an attorney licensed to practice law in this state and shall comply with Section 54.10. Payment of any referee services shall be provided from county funds.

(h) In a county with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Section 25.094, Education Code.

Credits

Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 1357, ch. 514, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 5 to 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1112, ch. 411, § 1, eff. June 15, 1977; Acts 1987, 70th Leg., ch. 385, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 168, § 4, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 232, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1297, § 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1514, § 12, eff. Sept. 1, 2001.

V. T. C. A., Family Code § 51.04, TX FAMILY § 51.04
Current through Chapters effective immediately through Chapter 8 of the 2017 Regular Session of the 85th Legislature

End of Document

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 3. Juvenile Justice Code (Refs & Annos)
Chapter 54. Judicial Proceedings (Refs & Annos)

This section has been updated. Click here for the updated version.

V.T.C.A., Family Code § 54.02

§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

Effective: [See Text Amendments] to August 31, 2009

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(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.

(b) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. At least one day prior to the transfer hearing, the

court shall provide the attorney for the child with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) In making the determination required by Subsection (a) of this section, the court shall 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.

(g) If the petition alleges multiple offenses that constitute more than one criminal transaction, the juvenile court shall either retain or transfer all offenses relating to a single transaction. A child is not subject to criminal prosecution at any time for any offense arising out of a criminal transaction for which the juvenile court retains jurisdiction.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor. On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure. The transfer of custody is an arrest.

(i) A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court.

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was:

(A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Section 19.02, Penal Code;

(B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under Section 19.02, Penal Code; or

(C) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4) the juvenile court finds from a preponderance of the evidence that:

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;

(ii) the person could not be found; or

(iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of this section.

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) of this section.

(m) Notwithstanding any other provision of this section, the juvenile court shall waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal court for criminal proceedings if:

(1) the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless:

(A) the child was not indicted in the matter transferred by the grand jury;

(B) the child was found not guilty in the matter transferred;

(C) the matter transferred was dismissed with prejudice; or

(D) the child was convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final; and

(2) the child is alleged to have violated a penal law of the grade of felony.

(n) A mandatory transfer under Subsection (m) may be made without conducting the study required in discretionary transfer proceedings by Subsection (d). The requirements of Subsection (b) that the summons state that the purpose of the hearing is to consider discretionary transfer to criminal court does not apply to a transfer proceeding under Subsection (m). In a proceeding under Subsection (m), it is sufficient that the summons provide fair notice that the purpose of the hearing is to consider mandatory transfer to criminal court.

(o) If a respondent is taken into custody for possible discretionary transfer proceedings under Subsection (j), the juvenile court shall hold a detention hearing in the same manner as provided by Section 54.01, except that the court shall order the respondent released unless it finds that the respondent:

(1) is likely to abscond or be removed from the jurisdiction of the court;

(2) may be dangerous to himself or herself or may threaten the safety of the public if released; or

(3) has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term of jail or prison and is likely to commit an offense if released.

(p) If the juvenile court does not order a respondent released under Subsection (o), the court shall, pending the conclusion of the discretionary transfer hearing, order that the respondent be detained in:

(1) a certified juvenile detention facility as provided by Subsection (q); or

(2) an appropriate county facility for the detention of adults accused of criminal offenses.

(q) The detention of a respondent in a certified juvenile detention facility must comply with the detention requirements under this title, except that, to the extent practicable, the person shall be kept separate from children detained in the same facility.

(r) If the juvenile court orders a respondent detained in a county facility under Subsection (p), the county sheriff shall take custody of the respondent under the juvenile court's order. The juvenile court shall set or deny bond for the respondent as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

Credits

Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 16, eff. Sept. 1, 1975; Acts 1987, 70th Leg., ch. 140, §§ 1 to 3, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 262, § 34, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 1477, § 8, eff. Sept. 1, 1999.

Editors' Notes

Melendez v. State, 4 S.W.3d 437 (Tex. App.--Houston [1st Dist.] 1999, no pet.) (failure to notify consular officer that national arrested not a jurisdictional defect in certification proceedings)

In re N.M.P., 969 S.W.2d 95 (Tex. App.--Amarillo 1999, no pet.) (novelty of DNA testing in 1988 justified delay in certification proceedings)

In re D.L.J., 981 S.W.2d 815 (Tex. App.--Houston [1st Dist.] 1998, no writ) (conducting hearing without counsel reversible)

In re J.C.C., 952 S.W.2d 47 (Tex. App.--San Antonio 1997, no writ) (due diligence not shown for post-18 year old certification proceedings)

Brosky v. State, 915 S.W.2d 120 (Tex. App.--Fort Worth 1996, review ref'd) (prosecuting for different overt act but same conspiracy as alleged in certification petition OK)

V. T. C. A., Family Code § 54.02, TX FAMILY § 54.02
Current through Chapters effective immediately through Chapter 8 of the 2017 Regular Session of the 85th Legislature

End of Document

Vernon's Texas Statutes and Codes Annotated
Code of Criminal Procedure (Refs & Annos)
Title 1. Code of Criminal Procedure of 1965
Courts and Criminal Jurisdiction
Chapter Four. Courts and Criminal Jurisdiction (Refs & Annos)

This section has been updated. Click here for the updated version.

Vernon's Ann.Texas C.C.P. Art. 4.18

Art. 4.18. Claim of underage

Effective: [See Text Amendments] to August 31, 2015

(a) A claim that a district court or criminal district court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court and that the juvenile court could not waive jurisdiction under Section 8.07(a), Penal Code, or did not waive jurisdiction under Section 8.07(b), Penal Code, must be made by written motion in bar of prosecution filed with the court in which criminal charges against the person are filed.

(b) The motion must be filed and presented to the presiding judge of the court:

(1) if the defendant enters a plea of guilty or no contest, before the plea;

(2) if the defendant's guilt or punishment is tried or determined by a jury, before selection of the jury begins; or

(3) if the defendant's guilt is tried by the court, before the first witness is sworn.

(c) Unless the motion is not contested, the presiding judge shall promptly conduct a hearing without a jury and rule on the motion. The party making the motion has the burden of establishing by a preponderance of the evidence those facts necessary for the motion to prevail.

(d) A person may not contest the jurisdiction of the court on the ground that the juvenile court has exclusive jurisdiction if:

(1) the person does not file a motion within the time requirements of this article; or

(2) the presiding judge finds under Subsection (c) that a motion made under this article does not prevail.

(e) An appellate court may review a trial court's determination under this article, if otherwise authorized by law, only after conviction in the trial court.

(f) A court that finds that it lacks jurisdiction over a case because exclusive jurisdiction is in the juvenile court shall transfer the case to the juvenile court as provided by Section 51.08, Family Code.

(g) This article does not apply to a claim of a defect or error in a discretionary transfer proceeding in juvenile court. A defendant may appeal a defect or error only as provided by Article 44.47.

Credits

Added by Acts 1995, 74th Leg., ch. 262, § 80, eff. Jan. 1, 1996. Amended by Acts 1999, 76th Leg., ch. 1477, §§ 27, 28, eff. Sept. 1, 1999.

Vernon's Ann. Texas C. C. P. Art. 4.18, TX CRIM PRO Art. 4.18
Current through Chapters effective immediately through Chapter 8 of the 2017 Regular Session of the 85th Legislature

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Vernon's Texas Statutes and Codes Annotated
Code of Criminal Procedure (Refs & Annos)
Title 1. Code of Criminal Procedure of 1965
Appeal and Writ of Error
Chapter 44. Appeal and Writ of Error (Refs & Annos)

This section has been updated. Click here for the updated version.

Vernon's Ann.Texas C.C.P. Art. 44.47

Art. 44.47. Appeal of transfer from juvenile court

Effective: September 1, 2003 to August 31, 2015

(a) A defendant may appeal an order of a juvenile court certifying the defendant to stand trial as an adult and transferring the defendant to a criminal court under Section 54.02, Family Code.

(b) A defendant may appeal a transfer under Subsection (a) only in conjunction with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court.

(c) An appeal under this section is a criminal matter and is governed by this code and the Texas Rules of Appellate Procedure that apply to a criminal case.

(d) An appeal under this article may include any claims under the law that existed before January 1, 1996, that could have been raised on direct appeal of a transfer under Section 54.02, Family Code.

Credits
Added by Acts 1995, 74th Leg., ch. 262, § 85, eff. Jan. 1, 1996. Amended by Acts 2003, 78th Leg., ch. 283, § 30, eff. Sept. 1, 2003.

Vernon's Ann. Texas C. C. P. Art. 44.47, TX CRIM PRO Art. 44.47
Current through Chapters effective immediately through Chapter 8 of the 2017 Regular Session of the 85th Legislature

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