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APRIL 24, 2017

COURT OF CRIMINAL APPEALS
P.O. BOX 12308
AUSTIN, TX 78711-2308



DEAR CLERK:

IN WR-82,264-03 & WR-82,264-03 I HAVE ENCLOSED:

1. MOTION FOR LEAVE OF COURT TO FILE AMICUS CURIAE BRIEF, AND

2. AMICUS CURIAE BRIEF.

SINCERELY,

JLG

No. WR-82,264-03
WR-82,264-04

| | | |
|---|---|---|
| | § | Court Of Criminal |
| Ex Parte | § | |
| Miguel Navarro, | § | Appeals For The |
| Applicant | § | |
| | § | State Of Texas |

## Motion For Leave Of Court To File Amicus Curiae Brief

Jeff Leggett comes now to move the Court for leave to file an Amicus Curiae brief in the above cause. In support thereof, Leggett would show:

1. Leggett is not an attorney, but a Texas prisoner who assists other prisoners with their legal problems.

2. Cody Montgomery Hefner was certified as an adult in Smith County for an incident that transpired when he was 13 years old. While assisting Hefner, Leggett noticed the issues in Hefner's case upon which Moon and Navarro are based. This Court denied Hefner's habeas application.

3. Leggett also assisted David Lee Garcia with a Moon based habeas application that was also denied.

4. Having studied this issue several years, there may be issues presented in the amicus brief that are not addressed in other briefs, and upon which the Court may want to rule Teague v Lane, 489 U.S. 299, 300 (1999).

Wherefore, Leggett moves the Court to grant leave to file an amicus brief, it is so prayed.

Respectfully Submitted,

Date April 24, 2017

Jeff Leggett

# Court Of Criminal Appeals

# Of Texas

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

Ex Parte Miguel Angel Navarro, Applicant

On Applications For Writs Of Habeas Corpus
Cause Nos. 08-DCR-050238-HC2 & 10-DCR-050236A-HC2
In The 240TH District Court From Fort Bend County, TX

## Brief Of Jeff Leggett As Amicus Curiae

## In Support Of Applicant Miguel Navarro

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# TABLE OF CONTENTS


| | PAGE |
|---|---|
| TABLE OF AUTHORITIES | ii |
| I. STATEMENT OF THE CASE | 1 |
| II. THRESHOLD REQUIREMENTS | 1 |
| CHRONOLOGY OF THE FILINGS | 2 |
| III. THE PRELIMINARY QUESTION | 4 |
| IV. RETROACTIVITY OF MOON | 6 |
| TEAGUE ANALYSIS | 8 |
| MOON ANNOUNCED A NEW RULE - STATE LAW | 9 |
| MOON IS RETROACTIVE - STATE LAW | 10 |
| MOON ANNOUNCED A NEW RULE - FEDERAL LAW | 12 |
| MOON - SUBSTANTIVE AND CONSTITUTIONAL | 12 |
| MOON - WATERSHED PROCEDURAL CRIMINAL RULE | 15 |
| V. THE FINAL QUESTIONS ANSWERED | 16 |
| IN THE BEGINNING - 1966 | 16 |
| THE DARK MIDDLE AGES | 17 |
| THE MOON TRANSITION | 18 |
| TEAGUE DOES NOT APPLY | 18 |
| HOOD DOES NOT APPLY | 19 |
| EQUAL PROTECTION | 19 |
| CERTIFICATE OF SERVICE | 22 |
| DECLARATION | 22 |

# TABLE OF AUTHORITIES


| | PAGE |
|---|---|
| 1. BOUSLEYN v UNITED STATES, 523 U.S. 614 (1998) | 8 |
| 2. BROWN v WAINWRIGHT, 537 F2d 154 (5TH CIR 1976) | 3 |
| 3. CHAIDEZ v UNITED STATES, 133 SCT 1103 (2013) | 6 |
| 4. DAVIS v UNITED STATES, 94 SCT 2298 (1974) | 6 |
| 5. EX PARTE DE LOS REYES, 392 SW3d 675 (TEX CRIM APP 2013) | 5 |
| 6. EX PARTE GRAVES, 70 SW3d 103 (TEX CRIM APP 2002) | 20 |
| 7. EX PARTE HOOD, 304 SW3d 397 (TEX CRIM APP 2010) | 7 |
| 8. EX PARTE KEITH, 202 SW3d 767 (TEX CRIM APP 2006) | 11 |
| 9. EX PARTE LAVE, 257 SW3d 235 (TEX CRIM APP 2008) | 6 |
| 10. EX PARTE NIX, 65 SW3d 664 (TEX CRIM APP 2001) | 10 |
| 11. GRIFFIN v PEOPLE OF ILLINOIS, 77 SCT 585 (1956) | 20 |
| 12. GRIFFITH v KENTUCKY, 107 SCT 708 (1987) | 21 |
| 13. HANKERSON v NORTH CAROLINA, 97 SCT 2339 (1977) | 21 |
| 14. KENT v UNITED STATES, 86 SCT 1045 (1966) | 3 |
| 15. LAMBRIX v SINGLETARY, 520 U.S. 518 (1997) | 12 |
| 16. MILLER v ALABAMA, 567 U.S. ___ (2012) | 21 |
| 17. MONTGOMERY v LOUISIANA, 577 U.S. ___ (2016) | 15 |
| 18. MOON v STATE, 451 SW3d 28 (TEX CRIM APP 2014) | 2 |
| 19. PADILLA v KENTUCKY, 130 SCT 1473 (2010) | 6 |
| 20. PENRY v LYNAUGH, 492 U.S. 302 (1989) | 13 |
| 21. SAFFLE v PARKS, 494 U.S. 484 (1990) | 8 |
| 22. SCHRIRO v SUMMERLIN, 542 U.S. 348 (2004) | 8 |
| 23. STRICKLAND v WASHINGTON, 104 SCT 2052 (1984) | 6 |
| 24. TAYLOR v STATE, 10 SW3d 673 (TEX CRIM APP 2000) | 11 |
| 25. TEAGUE v LANE, 109 SCT 1060 (1989) | 5 |
| 26. U.S. v JOHNSON, 102 SCT 2579 (1982) | 6 |
| 27. U.S. v MC PHAIL, 112 F3d 197 (5TH CIR 1997) | 5 |
| 28. WELCH v UNITED STATES, 136 SCT 1257 (2016) | 12 |
| 29. WHORTON v BOCKTING, 549 U.S. 406 (2007) | 8 |
| 30. WOOD v STATE, 18 SW3d 642 (TEX CRIM APP 2000) | 20 |
| 31. YATES v AIKEN, 108 SCT 534 (1988) | 6 |

# I. Statement Of The Case

This is a case in which Miguel Navarro was involved in a riotus altercation between high school and college students when he was fifteen years old. He was charged with the aggravated assault of Joe Eodice, and the murder of Matthew Haltom. Navarro was certified to stand trial as an adult, and proceeded to a jury trial. He was found guilty, and the jury assessed concurrent sentences of twenty years for the assault, and ninety-nine years for the murder. Navarro's convictions were affirmed on appeal, his petitions for discretionary review were refused, and his initial § 11.07 application was denied without written order. Navarro's successive § 11.07 application is now before this Court.

# II. Threshold Requirements

Navarro is before this Court on a successive petition asserting a new legal basis for habeas relief (Tx CCP, Art. 11.07, 4, a, 1). Navarro's current claims and issues have not been and could not have been presented previously in an original application filed under this article because 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 the date Navarro filed his original application.

## Chronology Of The Filings

Navarro's successive petitions' abuse of the writ immunity claims are based on this Court's ruling in Moon v State, 451 SW3d 28 (Tex Crim App 2014). Navarro filed his original habeas applications on April 4, 2014. These applications were denied without written orders on November 26, 2014. Moon was decided on December 10, 2014 – fourteen days after Navarro's applications were denied. Moon's December-2014 decision was not available to Navarro for his April-2014 filing.

Now the question becomes- was the legal basis recognized by, or could Navarro have reasonably formulated the legal basis for his current claims from final decisions of higher courts? Justice Keller best answered this question in her Moon dissent. She wrote, "For almost forty years the tendency among the 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 rank with the weight of that authority, and this Court now goes along with the court of appeals's ~~for~~ unconventional holding" (Moon at 52-53). The legal basis announced in Moon had not been recognized in at least forty years, so it was unavailable to Navarro until Moon was decided.

Keller's dissent also answered the question as to whether or not Navarro could have reasonably formulated the legal basis for his current claims before filing his original application. If the tendency in the courts of appeals for almost forty had been to hold that juvenile transfer orders need not state specifically the facts supporting the order, as Keller wrote, then Navarro could not

possibly have been expected to reasonably formulate the legal basis for his claims from decisions of the courts of appeals prior to Moon. And in Moon the Court found that the courts of appeals have been in conflict regarding the evidence needed to support the specificity of the findings with respect to transfer. The Court wrote, "No court of last resort in Texas, in so far as our research reveals, has yet spoken on these matters." (Moon at 43-44) If no court of last resort resort in Texas had spoken on the matters addressed in Moon, then Navarro could not have been expected to form the legal basis for his claim from decisions of this Court before Moon.

The state relied on Kent v United States, 86 SCt 1045 (1966) during the state district court habeas hearing (SHCR @ State's Proposed Findings of Fact...; subsection Conclusions of Law, ¶2). To rely on Kent for the proposition that Navarro should have formulated the legal basis for his successive claims from the Kent decision is misplaced. The United States Court of Appeals for the Fifth Circuit found that Kent was not applicable to Texas Brown v Wainwright, 537 F2d 154, 155 (5th Cir 1976). And Moon, (at 40) held that both the Texas statutory scheme and Kent are lacking any express statement of the applicable standard of appellate review of the juvenile court's transfer order. Although Kent established the basic framework for juvenile certifications, and although the Texas Legislature rewrote the statute to comply with Kent, Texas courts have not been compelled to comply with Kent or the Family Code's specificity requirement, and the standard of appellate review of transfer orders has never been addressed by the Court of Criminal Appeals until Moon. Therefore, Navarro could not have formulated the legal basis for his successive claims from Kent.

HAVING SHOWN THAT A NEW LEGAL BASIS FOR RELIEF EXISTS THAT WAS UNAVAILABLE TO HIM AT THE TIME HE FILED HIS ORIGINAL APPLICATION, NAVARRO MUST NOW SHOW THAT THE FACTS HE ALLEGES ARE AT LEAST MINIMALLY SUFFICIENT TO BRING HIM WITHIN THE AMBIT OF THE NEWLY IDENTIFIED LEGAL BASIS FOR RELIEF. CAMERON MOON WAS GRANTED RELIEF BECAUSE HE WAS DENIED DUE PROCESS DURING HIS TRANSFER HEARING. HE WAS DENIED DUE PROCESS IN HIS TRANSFER HEARING BECAUSE THE COURT FAILED TO STATE WITH SPECIFICITY THE REASONS RELIED ON FOR TRANSFER. THE LACK OF DUE PROCESS IN THE TRANSFER HEARING DEPRIVED THE ADULT CRIMINAL COURT OF JURISDICTION, AND DEPRIVED MOON HIS RIGHT TO A MEANINGFUL APPEAL. NAVARRO'S CLAIMS AND SITUATION ARE ALMOST IDENTICAL TO MOON'S. NAVARRO CLAIMS HE WAS DENIED DUE PROCESS DURING THE TRANSFER PROCEEDING BECAUSE THE COURT FAILED TO STATE WITH SPECIFICITY THE REASONS UPON WHICH THE TRANSFER ORDER WAS BASED. IN FACT, NAVARRO'S TRANSFER ORDER WAS SO DEFICIENT THAT THE STATE HABES COURT FOUND, "... THE JUVENILE COURT PROVIDED ZERO REASONING OR EVIDENTIARY SUPPORT FOR ANY OF ITS FINDINGS" (SHCR; FINDINGS OF FACTS..., P 54). IF CAMERON MOON'S DEFICIENT TRANSFER ORDER DENIED DUE PROCESS, THEN NAVARRO'S TRANSFER ORDER WITH ZERO REASONING OR EVIDENTIARY SUPPORT HAS ALLEGED AT LEAST MINIMALLY SUFFICIENT FACTS TO BRING HIM WITHIN THE AMBIT OF MOON'S NEWLY IDENTIFIED LEGAL BASIS FOR RELIEF. NAVARRO HAS SATISFIED THE THRESHOLD REQUIREMENTS FOR A SUCCESSIVE PETITION, SO THIS COURT SHOULD GRANT REVIEW.

## III. THE PRELIMINARY QUESTION

IS THE GENERAL BAR TO RETROACTIVE APPLICATIONS OF NEW DECISIONS AN ISSUE IN NAVARRO'S CASE? THAT IS THE PRELIMINARY QUESTION THAT NEEDS TO BE ANSWERED.

BUT ACTUALLY, THE STATE ANSWERED THAT QUESTION DURING THE STATE HABEAS PROCEEDINGS IN THE DISTRICT COURT. "THE STATE BELIEVES THAT MOON MERELY ENFORCED THE EXISTING LAW STATED IN KENT AND FAMILY CODE 54.02" (SHCR, STATE'S BENCH MEMORANDUM - IF MOON IS A NEW RULE..., p1, ¶1, LINE 1). THE STATE'S POSITION HAS BEEN THAT MOON ENFORCED THE LAW THAT WAS ALREADY EXISTING DURING MOON'S PROSECUTION, AND THEREFORE NAVARRO CAN NOT BENEFIT FROM THE MOON DECISION. THAT SAME LAW WAS ALSO EXISTING DURING NAVARRO'S PROSECUTION. BUT THE STATE HAS ARGUED THAT NAVARRO SHOULD NOT RECEIVE THE BENEFIT OF THE LAW EXISTING DURING HIS PROSECUTION BECAUSE THE HIGHER COURTS IN TEXAS DECIDED NOT TO ENFORCE THE LAW UNTIL MOON. THE STATE'S REASONING TROUNCES ON NAVARRO'S RIGHT TO EQUAL PROTECTION, AND FOR THAT REASON THE ARGUMENT IS FLAWED.

THE LAW THAT MOON ENFORCED HAS BEEN IN EFFECT SINCE 1967, IMMEDIATELY AFTER THE KENT DECISION, WHEN THE LEGISLATURE WROTE THE STATUTE TO COMPLY WITH KENT (NOW CODIFIED AS FAMILY CODE 54.02). APPLYING THE STATE'S REASONING WOULD MEAN THAT THE ONLY INDIVIDUALS TO WHOM THAT LATE-SIXTIES LAW APPLIES ARE CAMERON MOON AND THOSE WHO COME AFTER HIM. THE UNITED STATES SUPREME COURT HAS HELD OTHERWISE.

THE CASE THAT CONTROLS RETROACTIVE APPLICATION OF NEW DECISIONS IN THE FEDERAL COURTS IS TEAGUE V LANE, 109 SCT 1060 (1989). AND TEXAS FOLLOWS TEAGUE AS A GENERAL MATTER OF STATE HABEAS PRACTICE EX PARTE DE LOS REYES, 392 SW3d 675, 679 (TX CRIM APP 2013). BASICALLY, TEAGUE IS THIS - IF A DECISION ANNOUNCES A NEW RULE, THEN AND ONLY THEN DOES A RETROACTIVITY ANALYSIS TAKE PLACE. IF THE DECISION DOES NOT ANNOUNCE A NEW RULE, BUT IS MERELY THE APPLICATION OF AN OLD RULE, THEN IT AUTOMATICALLY APPLIES RETROACTIVELY U.S. V MC PHAIL, 112 F3d 197, 199 (5TH CIR 1997)(A DECISION THAT

DOES NOT PRESENT A NEW RULE, DOES NOT IMPLICATE THE TEAGUE ANALYSIS, AND APPLIES RETROACTIVELY TO CASES ON COLLATERAL REVIEW- CITING DAVIS v UNITED STATES, 94 SCT 2298, 2302-2306); U.S. v JOHNSON, 102 SCT 2579, 2586, COL 2, ¶3, AND CASES CITED THEREIN (1992)(WHEN A DECISION DOES NOT ALTER A RULE IN ANY MATERIAL WAY, THE RULE OF THE LATER CASE APPLIES RETROSPECTIVELY TO EARLIER CASES); YATES v AIKEN, 108 SCT 534, 539 @ NOTE 3 (1999)(WHEN A DECISION DOES NOT REPRESENT A NEW RULE, BUT MERELY THE GOVERNING PRINCIPLE, THEN THAT DECISION APPLIES RETROACTIVELY TO CASES ON COLLATERAL REVIEW). WHEN A DECISION DOES ANNOUNCE A NEW RULE, THEN IT DOES NOT APPLY RETROACTIVELY UNLESS IT IS A NEW SUBSTANTIVE RULE OF CONSTITUTIONAL LAW, OR A NEW WATERSHED RULE OF CRIMINAL PROCEDURE TEAGUE, (AT 307, 312-13).

## IV. RETROACTIVITY OF MOON

IN THE PREVIOUS PAGES AMICUS HAS ARGUED THAT MOON IS NOT NEW LAW. THE COURT OF CRIMINAL APPEALS FOLLOWS TEAGUE AS A GENERAL MATTER OF STATE HABEAS PRACTICE EX PARTE DE LOS REYES, (SUPRA- CITING EX PARTE LAVE, 257 SW3d 235 (TEX CRIM APP 2008)). AND TEAGUE HOLDS THAT RETROACTIVITY IS ONLY AN ~~NE~~ ISSUE WHEN A NEW RULE IS ANNOUNCED BECAUSE IT IS A FORGONE CONCLUSION THAT THE APPLICATION OF AN OLD RULE OR LAW IS RETROACTIVE TEAGUE, (109 SCT AT 1073-74). THE MOON DECISION APPLIED OLD LAW TO MOON'S SITUATION, MAKING A TEAGUE ANALYSIS UNNECESSARY. AN APPLICATION OF THIS TENET CAN BE READ IN CHAIDEZ v UNITED STATES, 133 SCT 1103 (2013). ROSELVA CHAIDEZ WANTED A RETROACTIVE APPLICATION OF PADILLA v KENTUCKY, 130 SCT 1473 (2010). HER POSITION, AND THE POSITION OF JUSTICE SOTOMAYER'S DISSENT, WAS THAT PADILLA MERELY APPLIED OLD LAW (STRICKLAND v WASHINGTON, 104 SCT 2052 (1984))

TO A NEW SET OF FACTS, AND WAS THEREFORE RETROACTIVE. IF THIS COURT FOLLOWS ALL OF TEAGUES HOLDINGS, THEN MOON IS RETROACTIVE BECAUSE IT IS MERELY THE APPLICATION OF OLD LAW. AN OLD RULE OR LAW IS RETROACTIVE UNDER TEAGUE, WHILE A NEW RULE OR LAW IS NOT RETROACTIVE UNTIL AND UNLESS IT PASSES THE TEAGUE RETROACTIVITY TEST.

APPLYING OLD LAW TO A NEW SITUATION DOES NOT NECESSARILY CREATE NEW LAW - BUT IT CAN. FOR EXAMPLE, COURTS FREQUENTLY APPLY STRICKLAND (OLD LAW) TO NEW SITUATIONS WITHOUT CREATING NEW LAW. HOWEVER, EVERY NOW AND THEN AN APPLICATION OF STRICKLAND WILL CREATE NEW LAW. A GOOD EXAMPLE IS CHAIDEZ. THE MAJORITY HELD THAT THE APPLICATION OF STRICKLAND TO PADILLA CREATED NEW LAW CHAIDEZ V UNITED STATES, 185 LED2D 149, 160 (2013). THERE IS A POSSIBILITY THAT MOON'S APPLICATION OF OLD LAW (TX FAM CODE, 54.02, h) TO MOON'S SITUATION CREATED NEW LAW.

IF THE MOON DECISION ANNOUNCED A NEW LAW THROUGH THE APPLICATION OF OLD LAW, ONE WOULD THINK A TEAGUE ANALYSIS TO DETERMINE RETROACTIVITY WOULD BE NEEDED. IT IS NOT QUITE THAT SIMPLE. TAKE A LOOK AT EX PARTE HOOD, 304 SW3d 397 (TEX CRIM APP 2010). THE COURT FOUND THAT A DECISION ANNOUNCING NEW LAW WILL BE APPLIED RETROACTIVELY. A DECISION THAT IS MERELY THE APPLICATION OF PREVIOUSLY AVAILABLE LAW WILL NOT BE APPLIED RETROACTIVELY HOOD (SUPRA AT 406). THIS IS THE OPPOSITE OF TEAGUE. THE COURT GRANTED HOOD REVIEW AND RELIEF BECAUSE THE DECISIONS UPON WHICH HOOD RELIED ANNOUNCED NEW LAW. BUT THE COURT NEVER MENTIONED APPLYING THE TEAGUE ANALYSIS TO DETERMINE RETROACTIVITY. EVIDENTLY, BEING NEW LAW IS ENOUGH TO APPLY A NEW DECISION RETROACTIVELY. TO QUOTE JUSTICE COCHRAN, "THIS IS ALL VERY AWKWARD" (HOOD AT 406). THE LAW SHOULD BE NEITHER

AWKWARD NOR AMBIGUOUS. IF FOR NO OTHER REASON, THE COURT SHOULD TAKE THE OPPORTUNITY IN NAVARRO'S CASE TO FIRMLY ANNOUNCE TEXAS' STANCE ON RETROACTIVITY. THE COURT HAS HELD THAT IT WILL FOLLOW TEAGUE AS A GENERAL MATTER OF STATE HABEAS PRACTICE, SO TO A TEAGUE ANALYSIS WE SHALL GO.

## TEAGUE ANALYSIS

UNDER TEAGUE A NEW RULE APPLIES RETROACTIVELY IN A COLLATERAL PROCEEDING ONLY IF THE RULE IS A SUBSTANTIVE RULE OF CONSTITUTIONAL LAW OR A WATERSHED RULE OF CRIMINAL PROCEDURE WHORTON V BOCKTING, 549 U.S. 406, 416 (2007). NEW SUBSTANTIVE RULES APPLY RETROACTIVELY BECAUSE THEY NECESSARILY CARRY A SIGNIFICANT RISK THAT A DEFENDANT STANDS CONVICTED OF AN ACT THE LAW DOES NOT MAKE CRIMINAL, OR FACES A PUNISHMENT THE LAW CANNOT IMPOSE ON HIM BECAUSE OF HIS STATUS OR OFFENSE SCHRIRO V SUMMERLIN, 542 U.S. 349, 351-52 (2004) (QUOTING BOUSLEYN V UNITED STATES, 523 U.S. 614, 620 (1998)). WATERSHED RULES OF CRIMINAL PROCEDURE ALSO APPLY RETROACTIVELY BECAUSE THOSE RULES IMPLICATE THE FUNDAMENTAL FAIRNESS AND ACCURACY OF THE CRIMINAL PROCEEDING SAFFLE V PARKS, 494 U.S. 484, 495 (1990). A NEW WATERSHED RULE OF CRIMINAL PROCEDURE MUST BE ONE WITHOUT WHICH THE LIKLIHOOD OF AN ACCURATE CONVICTION IS SERIOUSLY DIMINISHED SCHRIRO, (542 U.S. AT 352; QUOTING SAFFLE, 494 U.S. AT 505). WE MUST FIRST ESTABLISH THAT MOON ANNOUNCED A NEW RULE BEFORE A TEAGUE ANALYSIS IS IMPLICATED.

## MOON ANNOUNCED A NEW RULE – STATE

THE ISSUES IN MOON WERE THE INTERPRETATION OF THE TEXAS FAMILY CODE (§ 54.02,h), AND THE STANDARD OF APPELLATE REVIEW OF JUVENILE COURT TRANSFER DECISIONS. WHEN DECIDING MOON THIS COURT CONSIDERED CASES GENERATED BY COURTS OF APPEALS OVER THE PAST HALF-CENTURY (MOON, AT 36). THE GENERAL CONSENSUS AMONG THE APPELLATE COURT ALL THOSE YEARS HAD BEEN THAT, ALTHOUGH THE STATUTE REQUIRED THE JUVENILE JUDGE TO STATE SPECIFICALLY THE REASONS FOR TRANSFER, MERELY RECITING THE STATUTE SUFFICED. AND NO COURT OF LAST RESORT IN TEXAS HAD ADDRESSED THE STANDARD OF APPELLATE REVIEW OF JUVENILE TRANSFERS UNTIL MOON (MOON AT 36, 44).

MOON INTERPRETED A STATUTE (TxFam Code, 54.02,h), AND SET THE STANDARD OF APPELLATE REVIEW OF JUVENILE TRANSFERS. THERE CAN BE NO DOUBT THAT THE PART OF MOON SETTING THE STANDARD FOR APPELLATE REVIEW OF JUVENILE TRANSFERS STATES A NEW RULE, BECAUSE THE COURT OF CRIMINAL APPEALS FOUND THAT NO COURT OF LAST RESORT IN TEXAS HAD ADDRESSED THE ISSUE UNTIL MOON. SO THE NEW APPELLATE REVIEW STANDARD IS OBVIOUSLY A NEW RULE. THAT LEAVES THE STATUTE INTERPRETATION.

FOR AN INTERPRETATION OF A STATUTE TO BE CONSIDERED A NEW RULE, THE INTERPRETATION MUST HAVE BEEN PRECEEDED BY AN INCONSISTENT INTERPRETATION VIEWED BY THE COURT OF CRIMINAL APPEALS AS AUTHORITATIVE. AND TO BE VIEWED AS AUTHORITATIVE FOR PURPOSES OF DETERMINING WHEN A STATUTORY INTERPRETATION CONSTITUTES A NEW RULE, A PRIOR INCONSISTENT STATUTORY INTERPRETATION MUST BE EITHER (1) A RULE ARTICULATED IN PRIOR PRECEDENT FROM THE COURT OF CRIMINAL APPEALS, (2) A PRACTICE ARGUABLY SANCTIONED IN PRIOR CASES FROM THE COURT OF CRIMINAL APPEALS, OR (3) LONGSTANDING PRACTICE THAT LOWER COURTS HAD UNIFORMLY APPROVED

NIX V STATE, 65 SW3d 664, 661 (TEX CRIM APP 2001). MOON MEETS THE NIX CRITERIA FOR BEING A NEW RULE.

MOON CITES A MULTITUDE OF CASES IN WHICH THE TRANSFER ORDERS WERE NON-SPECIFIC, THEY WERE CHALLENGED FOR BEING NON-SPECIFIC, AND PETITIONS FOR DISCRETIONARY REVIEW WERE REFUSED (MOON, AT 41-42, NOTES 54-55). THIS COURT'S REFUSAL TO GRANT REVIEW OF THE SPECIFICITY ISSUE SANCTIONED THE ~~TRIAL~~ JUVENILE COURTS' PRACTICE OF GENERATING NON-SPECIFIC TRANSFER ORDERS. THIS SATISFIES THE SECOND NIX CRITERIA. MOON ALSO SATISFIES THE THIRD NIX CRITERIA. A LONGSTANDING PRACTICE THAT THE LOWER COURTS APPROVED WAS TO HOLD THAT NON-SPECIFIC TRANSFER ORDERS WERE SUFFICIENT TO TRANSFER JURISDICTION FROM THE JUVENILE COURT TO THE ADULT CRIMINAL COURT. MOON CHANGED THAT FORTY-YEAR PRACTICE BY ANNOUNCING THE NEW RULE - ONLY A SPECIFIC TRANSFER ORDER THAT SHOWS THE JUVENILE COURT'S WORK WITH ENOUGH SPECIFICITY TO ALLOW A MEANINGFUL APPEAL WILL CONFER JURISDICTION ON THE ADULT CRIMINAL COURT. AMICUS HAS SHOWN THAT MOON ANNOUNCED NEW RULES BECAUSE MOON SATISFIES NIX.

## MOON IS RETROACTIVE - STATE LAW

WHEN THE COURT OF CRIMINAL APPEALS ANNOUNCES A NEW INTERPRETATION OF A RULE, IN ORDER FOR THAT RULE TO BE APPLIED RETROACTIVELY, THE NEW INTERPRETATION MUST BE A "CLEAR BREAK" WITH THE PAST. THE "CLEAR BREAK" REQUIREMENT IS FULFILLED WHEN A COURT OF LAST RESORT OVERRULES A PRIOR DECISION, AND IN DOING SO, REPLACES A PRIOR INTERPRETATION OF THE STATUTE WITH AN INCONSISTENT INTERPRETATION; TO BE A TRUE CASE OF OVERRULING, THE NEWER INTERPRETATION CANNOT BE BASED UPON A LEGISLATIVE CHANGE IN THE STATUTE IN QUESTION, INSTEAD THE NEWER INTERPRETATION MUST BE ARTICULATED

BECAUSE THE ORIGINAL INTERPRETATION HAS BEEN FOUND TO BE INACCURATE, OR AT LEAST INSUPPORTABLE IN LIGHT OF FACTORS OTHER THAN A LEGISLATIVE CHANGE IN THE STATUTE TAYLOR v STATE, 10 SW3d 673, 681 (TEX CRIM APP 2000). THE NEW RULE MUST ALTER THE COURT'S UNDERSTANDING OF THE BEDROCK PROCEDURAL ELEMENTS ESSENTIAL TO THE FAIRNESS OF A PROCEEDING IN ORDER TO APPLY RETROACTIVELY EX PARTE KEITH, 202 SW3d 767, 769 (TEX CRIM APP 2006). THE NEW RULE ANNOUNCED IN MOON, JUSTICE KELLER FOUND, BROKE RANK WITH ALMOST FORTY YEARS OF AUTHORITY (MOON, AT 52-53). AND THIS COURT CITED NUMEROUS CASES IN MOON FROM WHICH THEIR NEW INTERPRETATION BROKE RANK (MOON, AT 41-42, NOTES 54-55). MOON IS OBVIOUSLY A "CLEAR BREAK" WITH THE PAST.

THE COURT OF CRIMINAL APPEALS (A COURT OF LAST RESORT) OVERRULED PRIOR DECISIONS, AND IN DOING SO, REPLACED THE PRIOR INTERPRETATION OF THE STATUTE WITH AN INCONSISTENT INTERPRETATION. THE NEW INTERPRETATION WAS NOT BASED UPON A LEGISLATIVE CHANGE, BUT WAS ARTICULATED BECAUSE THE ORIGINAL INTERPRETATION WAS FOUND TO BE INACCURATE, AND UNSUPPORTABLE IN LIGHT OF ALL FACTORS CONSIDERED. MOON'S NEW RULE REQUIRES THE JUVENILE COURT TO MAKE AND ARTICULATE CASE-SPECIFIC FINDINGS TO SUPPORT THE TRANSFER OF A JUVENILE DEFENDANT TO THE ADULT CRIMINAL COURT. AND THE ADULT CRIMINAL COURT DOES NOT ACQUIRE JURISDICTION IF THE JUVENILE COURT FAILS TO FOLLOW THE MOON RULE. THE NEW RULE SIGNIFICANTLY IMPACTS THE TRUTH-FINDING FUNCTION OF THE TRIAL, AND ALTERS THE COURT'S UNDERSTANDING OF THE BEDROCK PROCEDURAL ELEMENTS THAT MUST BE FOLLOWED BECAUSE THEY ARE ESSENTIAL TO THE FAIRNESS OF A JUVENILE TRANSFER PROCEEDING. HAVING SATISFIED ALL THE REQUIREMENTS OF TAYLOR, NIX, AND KEITH (SUPRA), THE MOON RULE REQUIRES RETROACTIVE APPLICATION UNDER STATE LAW. BUT WE STILL

MUST CONSIDER WHETHER OR NOT EITHER OF TEAGUE'S EXCEPTIONS APPLY IF WE ARE TO PERFORM A TEAGUE ANALYSIS.

## MOON ANNOUNCED A NEW RULE - FEDERAL LAW

A CASE ANNOUNCES A NEW RULE IF THE RESULT WAS NOT DICTATED BY PRECEDENT AT THE TIME THE DEFENDANT'S CONVICTION BECAME FINAL TEAGUE, (489 AT 301); WELCH v UNITED STATES, 136 SCT 1257, 1264 (2016). AND A HOLDING IS NOT SO DICTATED UNLESS IT WOULD HAVE BEEN APPARENT TO ALL REASONABLE JURISTS LAMBRIX v SINGLETARY, 520 U.S. 518, 527-28 (1997). THE PRECEDENT AT THE TIME NAVARRO'S CONVICTION BECAME FINAL WAS THAT TRANSFER ORDERS DID NOT HAVE TO LIST WITH SPECIFICITY THE REASONS ON WHICH THE COURT RELIED FOR TRANSFER. IN THE PAST A NON-SPECIFIC TRANSFER ORDER WAS UNDERSTOOD BY ALL REASONABLE JURISTS TO BE SUFFICIENT TO CONFER JURISDICTION ON THE ADULT CRIMINAL COURT. MOON CHANGED FORTY TO FIFTY YEARS OF PRECEDENT AND PRACTICE, AND THAT MAKES MOON'S ANNOUNCEMENTS NEW RULES. NEW RULES ARE NOT RETROACTIVE UNDER FEDERAL LAW UNLESS THEY FALL UNDER ONE OF TEAGUE'S TWO EXCEPTIONS. COURTS MUST GIVE RETROACTIVE EFFECT TO NEW SUBSTANTIVE RULES OF CONSTITUTIONAL LAW AND WATERSHED RULES OF CRIMINAL PROCEDURE TEAGUE, (489 U.S. AT 312-13).

## MOON - SUBSTANTIVE AND CONSTITUTIONAL

SUBSTANTIVE RULES INCLUDE RULES PROHIBITING CRIMINAL PUNISHMENT FOR CERTAIN PRIMARY CONDUCT, AS WELL AS RULES PROHIBITING A CERTAIN CATEGORY OF PUNISHMENT FOR A CLASS OF DEFENDANTS BECAUSE OF THEIR STATUS OR OFFENSE PENRY v LYNAUGH, 492 U.S.

302, 330 (1999). MOON PROHIBITS CRIMINAL PUNISHMENT FOR CONDUCT ENGAGED IN BY A JUVENILE (CERTAIN PRIMARY CONDUCT), AND ALSO PROHIBITS ADULT CRIMINAL PUNISHMENT (A CERTAIN CATEGORY OF PUNISHMENT) FOR JUVENILES (A CLASS OF DEFENDANTS BECAUSE OF THEIR STATUS) UNLESS AND UNTIL THE JUVENILE COURT DEEM THAT THE JUVENILE MEETS THE STRINGENT STANDARDS FOR ADULT PUNISHMENT BY SHOWING THE COURT'S WORK, AND BY STATING ITS REASONS FOR TRANSFER WITH SPECIFICITY. MOON IS A DECISION THAT INTERPRETS A STATUTE (TX FAM CODE, 54.02, h). DECISIONS THAT INTERPRET A STATUTE ARE SUBSTANTIVE IF AND WHEN THEY MEET THE NORMAL CRITERIA FOR A SUBSTANTIVE RULE— WHEN THEY ALTER THE RANGE OF CONDUCT OR THE CLASS OF PERSONS THE LAW PUNISHES WELCH, (136 SCT AT 1267).

MOON ADDRESSES CONSTITUTIONAL DUE PROCESS IN TWO WAYS. FIRST, EITHER A TRANSFER ORDER IS VALID OR IT IS NOT VALID. IF THE ORDER IS VALID, THEN THE ADULT CRIMINAL COURT OBTAINS JURISDICTION. IF THE ORDER IS NOT VALID - AS IN A CASE USING A NON-SPECIFIC TRANSFER ORDER, THEN THE ADULT CRIMINAL COURT DOES NOT OBTAIN JURISDICTION. IF THE ADULT CRIMINAL COURT ACTS WITHOUT JURISDICTION - AS IN MOON AND NAVARRO, THEN DUE PROCESS IS VIOLATED. MOON ALSO ADDRESSED A SECOND ASPECT OF DUE PROCESS. A COURT'S ORDER MUST BE BASED ON SOMETHING, AND THAT SOMETHING MUST BE ARTICULATED FOR ALL THE WORLD TO READ. AN ORDER BASED ON NOTHING IS ARBITRARY AND CAPRICIOUS, THEREBY VIOLATING DUE PROCESS. AND AN ORDER THAT DOES NOT STATE WITH SPECIFICITY THE REASONS UPON WHICH ~~AN OR~~ IT IS BASED IS SERIOUSLY FLAWED. IT PROVIDES NO EVIDENCE UPON WHICH TO BASE THE TRANSFER, AND IT PROVIDES NO INFORMATION UPON WHICH A MEANINGFUL APPEAL CAN BE BASED - BOTH DUE PROCESS VIOLATIONS. THE KENT COURT RECOGNIZED THIS IN 1966. THE TEXAS LEGISLATURE RECOGNIZED THIS IN 1967 BY CONFORMING THE STATUTE TO KENT. MOON ENFORCED KENT AND THE STATUTE IN

2014. THIS COURT UPHELD CONSTITUTIONAL DUE PROCESS FOR JUVENILES IN MOON, AND ANNOUNCED A NEW SUBSTANTIVE RULE OF CONSTITUTIONAL LAW WHEN IT ALTERED THE CLASS OF PERSONS WHO COULD BE PUNISHED AS ADULTS, BY LIMITING JUVENILES WHO CAN BE TRANSFERRED TO THOSE WHOSE JUVENILE COURT JUDGES SHOW THEIR WORK

TO BE SURE, WE CAN DIG A LITTLE DEEPER. NON-SPECIFIC JUVENILE TRANSFER ORDERS HELD UP ON APPEAL FOR FORTY YEARS BEFORE MOON. THEN MOON WAS DECIDED, AND THE ELEMENTS REQUIRED TO COMPLETE A JUVENILE TRANSFER WERE MODIFIED BY REQUIRING THE COURT TO BE SPECIFIC AND TO SHOW ITS WORK. THE MODIFICATION OF ELEMENTS REQUIRED TO COMPLETE A CRIMINAL PROCEDURE IS A SIGNAL OF A SUBSTANTIVE RULE SCHRIRO v SUMMERLIN, 542 U.S. 348, 354 (2004).

TRANSFERRING JUVENILES TO ADULT COURTS FOR PROSECUTION IS AN EXCESSIVE MEASURE FOR CHILDREN WHOSE CRIMES REFLECT TRANSIENT IMMATURITY - THAT IS, MOST JUVENILE DEFENDANTS. MOON CREATES TWO GUARANTEES. FIRST, JUVENILES WHO ARE CONSIDERED FOR TRANSFER TO ADULT CRIMINAL COURTS WILL ONLY BE TRANSFERRED IF THEY FALL INTO THE SMALL PERCENT OF THOSE WHO CANNOT BE REHABILITATED IN THE JUVENILE SYSTEM. SECOND, JUVENILE COURTS WILL STATE WITH SPECIFICITY THEIR REASONS FOR TRANSFER, AND SHOW THEIR WORK. MOON MANDATED THE DEGREE OF PROCEDURE REQUIRED IN ORDER TO IMPLEMENT ITS SUBSTANTIVE GUARANTEES.

MOON'S HOLDING HAS A PROCEDURAL COMPONENT. IT REQUIRES SPECIFICITY AND THE SHOWING OF WORK. THERE IS A REASON FOR THAT. MOON PROVIDES A PROCEDURE THROUGH WHICH A JUVENILE CAN SHOW HE BELONGS TO THE PROTECTED CLASS OF JUVENILES WHO CAN BE REHABILITATED, AND WHO ARE NOT ELIGIBLE TO BE PUNISHED AS ADULTS.

MOON PROVIDES THIS PROCEDURE BY ENFORCING KENT AND THE STATUTE (TX FAM CODE, 54.02,h). MOON'S PROCEDURAL REQUIREMENTS DO NOT TRANSFORM THE NEW SUBSTANTIVE RULE OF CONSTITUTIONAL LAW INTO A PROCEDURAL RULE. THE MONTGOMERY COURT FACED A SIMILAR SITUATION, AND DISCUSSED IT THOROUGHLY MONTGOMERY V LOUISIANA, 577 U.S. ____, (SLIP OP. AT 16-17 (2016)) AND CASES CITED THEREIN. THE MONTGOMERY COURT FOUND THAT AT TIMES A PROCEDURAL REQUIREMENT IS NECESSARY TO IMPLEMENT A SUBSTANTIVE GUARANTEE. THE SAME HOLDS TRUE IN MOON. THE NEW SUBSTANTIVE RULE OF CONSTITUTIONAL LAW ANNOUNCED IN MOON CONTROLS THE OUTCOME OF A CASE, SO THIS COURT IS REQUIRED TO GIVE RETROACTIVE EFFECT TO THE RULE MONTGOMERY, 577 U.S. ____ (SLIP OP. AT 8).

## MOON - WATERSHED CRIMINAL PROCEDURE RULE

IN THE EVENT THAT THIS COURT FINDS THAT MOON DOES NOT ANNOUNCE A NEW ~~RULE~~ SUBSTANTIVE RULE OF CONSTITUTIONAL LAW, THEN CERTAINLY THE COURT WOULD AGREE THAT MOON ANNOUNCED A NEW WATERSHED RULE OF CRIMINAL PROCEDURE. COURTS MUST GIVE RETROACTIVE EFFECT TO NEW WATERSHED RULES OF CRIMINAL PROCEDURE IMPLICATING THE FUNDAMENTAL FAIRNESS AND ACCURACY OF THE CRIMINAL PROCEEDING TEAGUE, (489 U.S. AT 312-313), AT LEAST AT THE FEDERAL LEVEL. STATES ARE REQUIRED TO GIVE RETROACTIVE EFFECT TO NEW SUBSTANTIVE RULES OF CONSTITUTIONAL LAW, BUT THE UNITED STATES SUPREME COURT HAS NOT ADDRESSED THE CONSTITUTIONAL STATUS OF TEAGUE'S EXCEPTION FOR WATERSHED RULES OF CRIMINAL PROCEDURE MONTGOMERY, 577 U.S. ____ (SLIP OP. AT 8). HOWEVER, IF TEXAS FOLLOWS TEAGUE, THEN WATERSHED RULES OF CRIMINAL PROCEDURE WILL BE GIVEN RETROACTIVE EFFECT AS WELL.

TO BE RECOGNIZED AS A WATERSHED RULE OF CRIMINAL PROCEDURE THE RULE MUST BE ONE WITHOUT WHICH THE LIKLIHOOD OF AN ACCURATE CONVICTION IS SERIOUSLY DIMINISHED SCHRIRO v SUMMERLIN, 124 SCT 2519, 2523 (2004). MOON HELD THAT A JUVENILE COURT'S FAILURE TO RECORD CASE-SPECIFIC REASONS FOR TRANSFERRING THE JUVENILE TO THE ADULT COURT VIOLATES DUE PROCESS, AND CAUSES THE ADULT COURT TO BE DEPRIVED OF JURISDICTION. THE LIKLIHOOD OF AN ACCURATE CONVICTION WOULD BE SERIOUSLY DIMINISHED BECAUSE, ACTING WITHOUT JURISDICTION, THE COURT'S ACTIONS ARE VOID. NOT ONLY WOULD THERE NOT BE AN ACCURATE CONVICTION, THERE COULD BE NO VALID CONVICTION AT ALL BECAUSE THE COURT ACTED WITHOUT JURISDICTION. THE CERTIFICATION PROCEDURE ANNOUNCED IN MOON IS DESIGNED TO INCREASE THE ACCURACY OF ANY CONVICTION BY PROVIDING A FUNDAMENTALLY FAIR TRANSFER PROCEEDING. THEREFORE, MOON ANNOUNCED A NEW WATERSHED RULE OF CRIMINAL PROCEDURE THAT SHOULD BE GIVEN RETROACTIVE EFFECT.

## V. THE FINAL QUESTIONS ANSWERED

THIS COURT ORDERED THE PARTIES TO BRIEF WHETHER NAVARRO MAY RELY O THE OPINION IN MOON, AND IF SO, WHETHER NAVARRO IS ENTITLED TO HABEAS RELIEF BASED ON MOON (ORDER - JANUARY 25, 2017). AMICUS BELIEVES IT IS NOT AS COMPLICATED AS IT APPEARS.

## IN THE BEGINNING - 1966

THE JUVENILE JUSTICE WORLD WAS A DARK AND FORMLESS MASS WHERE EVERYONE DID WHAT HE THOUGHT BEST. THEN KENT SHED LIGHT ON SOME OF THE PROBLEMS IN 1966. KENT RECOGNIZED THAT SOCIETY HAS A SPECIAL CONCERN FOR CHILDREN, JUVENILE JUSTICE IS ROOTED IN

SOCIAL WELFARE PHILOSOPHY RATHER THAN IN CORPUS JURIS, JUVENILE PROCEEDINGS ARE CIVIL, AND THE OBJECTIVES ARE TO PROVIDE GUIDANCE AND REHABILITATION FOR THE CHILD AND PROTECTION FOR SOCIETY - NOT TO FIX CRIMINAL RESPONSIBILITY, GUILT, AND PUNISHMENT KENT, (393 U.S. AT 554-55). KENT ALSO RECOGNIZED THAT THE TRANSFER DETERMINATION IS A CRITICALLY IMPORTANT PROCEEDING WHERE NON-CRIMINAL TREATMENT IS TO BE THE RULE - AND ADULT CRIMINAL TREATMENT, THE EXCEPTION WHICH MUST BE GOVERNED KENT, (393 U.S. AT 560). KENT WENT ON TO INSTRUCT THAT A FULL INVESTIGATION MUST BE MADE INTO THE CHILD'S CIRCUMSTANCES, THAT A WAIVER OF JURISDICTION MUST BE ACCOMPANIED WITH A STATEMENT OF THE REASONS THEREFORE, THE BASIS OF THE ORDER MUST BE SET FORTH WITH SUFFICIENT SPECIFICITY TO PERMIT MEANINGFUL REVIEW, AND THE HEARING MUST MEASURE UP TO THE ESSENTIALS OF DUE PROCESS AND FAIR TREATMENT KENT, (393 U.S. AT 561-62). IN SHORT, JUVENILE TRANSFER PROCEEDINGS MUST MEET CONSTITUTIONAL STANDARDS. THE TEXAS LEGISLATURE USED KENT'S APPENDIX (KENT, AT 565-68) AS A GUIDE TO CONFORM TEXAS LAW TO KENT'S ARTICULATED CONSTITUTIONAL STANDARDS IN 1967. UNFORTUNATELY, THE LAW WAS NOT FOLLOWED.

## THE DARK MIDDLE AGES

THE NEW LAW BASED ON KENT GAVE JUVENILE COURTS GUIDANCE, AND AN OUTLINE FOR CONDUCTING CONSTITUTIONAL JUVENILE TRANSFER PROCEEDINGS. HOWEVER, THE COURTS CONTINUED ON THE OLD FAMILIAR ROAD BY FAILING TO GENERATE ORDERS THAT COMPLIED WITH THE STATUTE. THE STATUTE WAS WRITTEN SO JUVENILE PROCEEDINGS WOULD MEET CONSTITUTIONAL MUSTER. PROCEEDINGS THAT FAILED TO FOLLOW THE STATUTE WERE NOT CONSTITUTIONAL. NOBODY SEEMED TO CARE FOR ALMOST FORTY YEARS.

## THE MOON TRANSITION

THEN ALONG CAME MOON TO ENFORCE THE STATUTE AND CAUSE JUVENILE TRANSFER PROCEEDINGS TO BE CONDUCTED IN A CONSTITUTIONAL MANNER. BUT WHAT ABOUT ALL THE CHILDREN WHO CAME BEFORE MOON, WHO DID NOT HAVE THE BENEFIT OF THE STATUTE (TXFAM CODE, 54.02, h) BECAUSE THE STATUTE WAS NOT AVAILABLE TO THEM- BECAUSE THE COURTS REFUSED TO ENFORCE THE "SPECIFICITY" ELEMENT OF THE STATUTE? PRECEDENT WAS AGAINST THEM FOR ALMOST FORTY YEARS. AND WHAT ABOUT NAVARRO? MANY CHILDREN WERE POSSIBLY SUBJECTED TO UNCONSTITUTIONAL TRANSFERS. THE JUVENILE COURTS EITHER VALIDLY WAIVE EXCLUSIVE JURISDICTION, THEREBY CONFERRING JURISDICTION ON THE CRIMINAL COURTS, OR THEY DO NOT MOON, (451 SW3d AT 52). NAVARRO'S ADULT CRIMINAL COURT NEVER OBTAINED JURISDICTION BECAUSE THE JUVENILE COURT'S WAIVER, BEING NONCOMPLIANT WITH THE STATUTE, AND THEREFORE UNCONSTITUTIONAL - WAS VOID AND NOT VALID.

## TEAGUE DOES NOT APPLY

"IMPLICIT IN THE RETROACTIVITY APPROACH WE ADOPT TODAY IS THE PRINCIPLE THAT HABEAS CORPUS CANNOT BE USED AS A VEHICLE TO CREATE NEW CONSTITUTIONAL RULES OF CRIMINAL PROCEDURE UNLESS THOSE RULES WOULD BE APPLIED RETROACTIVELY ..." TEAGUE, (489 U.S. AT 316). THE PRINCIPLE IS THAT HABEAS CORPUS CANNOT BE THE VEHICLE. THE MOON DECISION WAS ON DIRECT APPEAL, NOT HABEAS CORPUS, SO TEAGUE'S PRINCIPLES DO NOT APPLY TO DETERMINE THE RETROACTIVITY OF MOON.

## HOOD DOES NOT APPLY

HOOD STOOD FOR THE PROPOSITION THAT NEW LAW IS RETROACTIVE, BUT APPLICATIONS OF PREVIOUSLY AVAILABLE LAW ARE NOT RETROACTIVE. THE KEY PHRASE IS "PREVIOUSLY AVAILABLE". THE STATUTE WAS ENACTED IN 1967, BUT WAS NOT ENFORCED UNTIL MOON. THEREFORE, THE STATUTE WAS NOT AVAILABLE TO NAVARRO, AND HOOD DOES NOT APPLY. THEN WHAT SHOULD WE DO? DO THE RIGHT THING OF COURSE.

## EQUAL PROTECTION

THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT CHILDREN ARE CONSTITUTIONALLY DIFFERENT FROM ADULTS MONTGOMERY, (577 U.S. ___ AT SLIP OP. 15) AND CASES CITED THEREIN. THIS IS NOT ABOUT THE ADULT NAVARRO. THIS IS ABOUT THE CHILD NAVARRO. THE ISSUE IS THAT THE TRANSFER PROCEDURE USED WITH THE CHILD NAVARRO VIOLATED HIS CONSTITUTIONAL RIGHTS. TO MAKE MATTERS WORSE, THE LEGISLATURE FIXED THE PROBLEM IN 1967 BY CONFORMING THE STATUTE TO KENT'S CONSTITUTIONAL PARAMETERS, BUT THE COURTS REFUSED TO FOLLOW THE STATUTE FOR ALMOST FORTY YEARS - UNTIL MOON. WHAT SHOULD WE DO WHEN THE CONSTITUTIONAL RIGHTS OF A CHILD HAVE BEEN VIOLATED? THE ANSWER IS TO DO THE RIGHT THING - FIX THE PROBLEM, AND DO THE BEST WE CAN TO RELIEVE ANY HARM THAT WAS DONE. MOON FIXED THE PROBLEM, BUT SO FAR, ONLY FOR CAMERON MOON. NAVARRO WAS IN THE SAME SITUATION AS CAMERON MOON. NAVARRO WAS SUBJECTED TO A TRANSFER PROCEEDING IN WHICH THE COURT FAILED TO STATE WITH SPECIFICITY THE REASONS RELIED ON FOR TRANSFER. THEREFORE, NAVARRO'S ADULT CRIMINAL COURT NEVER OBTAINED JURISDICTION BECAUSE THE TRANSFER ORDER WAS NOT VALID, AND ACTION THE ADULT CRIMINAL COURT IN NAVARRO'S CASE WAS VOID.

AMICUS HAS SHOWN THAT NAVARRO MEETS THE CRITERIA TO HAVE HIS SUCCESSIVE PETITION REVIEWED BECAUSE MOON WAS NOT AVAILABLE TO HIM AT THE TIME HE FILED HIS FIRST HABEAS APPLICATION. AND HE HAS SHOWN THAT HIS NON-SPECIFIC TRANSFER ORDER VIOLATED HIS CONSTITUTIONAL RIGHT TO DUE PROCESS. NAVARRO HAS ALSO SHOWN THAT HE WAS SITUATED SIMILARLY TO CAMERON MOON. DISPARATE TREATMENT WOULD VIOLATE NAVARRO'S RIGHT TO EQUAL PROTECTION. THIS IS THE REASON NAVARRO MAY RELY ON THE OPINION IN MOON, AND THE REASON NAVARRO IS ENTITLED TO HABEAS RELIEF BASED ON MOON.

MAYBE TEAGUE APPLIES AFTER ALL. IF SO, THEN MOON IS RETROACTIVE UNDER TEAGUE, AND NAVARRO IS ENTITLED TO RELIEF. MAYBE THE RATIONALE OF HOOD APPLIES AFTER ALL. IF SO, THEN MOON IS RETROACTIVE UNDER HOOD, AND NAVARRO IS ENTITLED TO RELIEF. NAVARRO IS CERTAINLY ENTITLED TO RELIEF UNDER ~~TEAGUE~~, TAYLOR, NIX, AND KEITH (SUPRA) BECAUSE MOON IS RETROACTIVE UNDER THOSE CASES. WHETHER OR NOT TEAGUE OR HOOD APPLY, NAVARRO IS ENTITLED TO RELIEF BECAUSE IT IS THE RIGHT THING TO DO. MOON FIXED THE PROBLEM. THIS COURT SHOULD RELIEVE THE HARM. SIMILARLY SITUATED LITIGANTS BRINGING SIMILAR CLAIMS SHOULD BE TREATED SIMILARLY OR THE EQUAL PROTECTION CLAUSE IS VIOLATED WOOD V STATE, 18 SW3d 642, 650 (TEX CRIM APP 2000); EX PARTE HOOD, 304 SW3d 397, 400 (TEX CRIM APP 2010). COURTS IN HABEAS CORPUS PROCEEDINGS SEEK TO ENSURE FUNDAMENTAL FAIRNESS TO ALL CRIMINAL DEFENDANTS EX PARTE GRAVES, 70 SW3d 103, 109 (TEX CRIM APP 2002). AND THE CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION BOTH CALL FOR PROCEDURES IN CRIMINAL TRIALS WHICH ALLOW NO INVIDIOUS DISCRIMINATIONS BETWEEN PERSONS GRIFFIN V PEOPLE OF ILLINOIS, 77 SCT 585, 589 (1956).

THE FACT THAT THE NEW RULE ANNOUNCED IN MOON WAS A CLEAR BREAK WITH THE PAST HAS NO BEARING ON THE ACTUAL INEQUITY THAT RESULTS WHEN ONLY ONE OF MANY SIMILARLY SITUATED DEFENDANTS RECEIVES THE BENEFIT OF THE NEW RULE GRIFFITH V KENTUCKY, 107 SCT 708, 716 (1987). MOON'S HOLDING INDICATES THAT JUVENILES WHO WERE TRANSFERRED TO ADULT CRIMINAL COURTS BASED ON NON-SPECIFIC TRANSFER ORDERS, WERE TRIED BY COURTS LACKING JURISDICTION. THIS RAISES THE RISK THAT MANY JUVENILES ARE BEING HELD IN VIOLATION OF THE CONSTITUTION. A SIMILAR SITUATION WAS CONFRONTED IN MONTGOMERY, 577 U.S. ___ (slip op. AT 20) WHEN DECIDING WHETHER MILLER V ALABAMA, 567 U.S. ___ (2012) SHOULD BE RETROACTIVE. MILLER'S CONCLUSION THAT LIFE WITHOUT PAROLE IS DISPROPORTIONATE FOR THE VAST MAJORITY OF JUVENILES RAISED A GRAVE RISK THAT MANY JUVENILES ARE BEING HELD IN VIOLATION OF THE CONSTITUTION. FAILING TO GIVE MOON RETROACTIVE EFFECT POSES THE SAME RISK - THAT MANY JUVENILES ARE BEING HELD IN VIOLATION OF THE CONSTITUTION BECAUSE THE ADULT CRIMINAL COURTS IN WHICH THEY WERE PROSECUTED LACKED JURISDICTION.

NAVARRO AND MOON WERE SIMILARLY SITUATED. THEY WERE BOTH TRANSFERRED TO ADULT COURTS USING NON-SPECIFIC TRANSFER ORDERS, AND TRIED BY ADULT COURTS LACKING JURISDICTION. CAMERON MOON HAS RECEIVED THE BENEFIT OF THE NEW RULE. NAVARRO HAS NOT. THE RULE SHOULD APPLY RETROACTIVELY TO NAVARRO, AS ANY OTHER APPROACH WOULD BE INEQUITABLE TEAGUE, (489 U.S. AT 315). THE HARM CAUSED BY THE FAILURE TO TREAT SIMILARLY SITUATED DEFENDANTS ALIKE CANNOT BE EXAGGERATED! SUCH INEQUITABLE TREATMENT HARDLY COMPORTS WITH THE IDEAL OF THE ADMINISTRATION OF JUSTICE WITH AN EVEN HAND HANKERSON V NORTH CAROLINA, 97 SCT 2339, 2347 (1977). NOW WE HAVE OUR FINAL ANSWERS. NAVARRO MAY RELY ON THE OPINION IN MOON, AND HE IS ENTITLED TO HABEAS RELIEF BASED

ON MOON BECAUSE ANY OTHER TREATMENT WOULD BE FUNDAMENTALLY UNFAIR.

WHEREFORE, AMICUS PRAYS THAT THE COURT GRANT NAVARRO THE RELIEF HE REQUESTS.

RESPECTFULLY SUBMITTED,

Jeff Leggett

DATE April 24, 2017 JEFF LEGGETT

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE CAUSED A TRUE AND CORRECT COPY OF THE FORGOING DOCUMENT TO BE SERVED ON THE PARTIES INVOLVED BY DEPOSITING IT IN THE INSTITUTIONAL MAIL COLLECTION RECEPTACLE ON THE BELOW DATE WITH FIRST CLASS POSTAGE PREPAID, AND ADDRESSED: 240TH DISTRICT ATTORNEY, 1422 EUGENE HEIMANN CIR., RICHMOND, TX 77469.

Jeff Leggett

DATE April 24, 2017 JEFF LEGGETT

## DECLARATION

I HEREBY DECLARE UNDER THE PENALTY OF PERJURY THAT THE FORGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Jeff Leggett

DATE April 24, 2017 JEFF LEGGETT