

No. 23-1345

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**In the Supreme Court of the United States**

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DANNY RICHARD RIVERS, PETITIONER,

v.

BOBBY LUMPKIN, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION, RESPONDENT.

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*On Writ of Certiorari  
to the United States Court of Appeals  
for the Fifth Circuit*

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**JOINT APPENDIX**

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January 21, 2025

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CERTIORARI GRANTED: DEC. 6, 2024**

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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
(WICHITA FALLS)

Civil Docket For Case #: 7:17-cv-00124-O-BP

DANNY RICHARD RIVERS,

v.

DIRECTOR, TDCJ-CID,

**RELEVANT DOCKET ENTRIES**

DATE	NO.	PROCEEDINGS
08/30/2017	1	PETITION for Writ of Habeas Corpus (Filing fee \$ 5, not paid.), filed by Danny Richard Rivers. (Attachments: # 1 Exhibits, # 2 Envelope) (rlf) [Transferred from Texas Eastern on 8/31/2017.] (Entered: 08/30/2017) * * *
07/27/2018	38	FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE re: 1 Petition for Writ of Habeas Corpus filed by Danny Richard Rivers. Because Petitioner has not shown that he is entitled to habeas relief, the undersigned RECOMMENDS that Petitioner's Amended Petition for Writ of Habeas Corpus (ECF No. 27) be DISMISSED with prejudice. (Ordered by Magistrate Judge Hal R. Ray, Jr on 7/27/2018) (trt) (Entered: 07/27/2018)

DATE	NO.	PROCEEDINGS
		* * *
09/17/2018	44	ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE re: 38 Findings and Recommendations on Case re: 1 Petition for Writ of Habeas Corpus filed by Danny Richard Rivers. For the foregoing reasons, the petition for writ of habeas corpus is DENIED. (Ordered by Judge Reed C. O'Connor on 9/17/2018) (trt) (Entered: 09/17/2018)
09/17/2018	45	JUDGMENT. It is ORDERED, ADJUDGED, and DECREED that the petition for writ of habeas corpus is DENIED. re: 22 Administrative Record, 23 Administrative Record, 24 Administrative Record, 25 Administrative Record. (Ordered by Judge Reed C. O'Connor on 9/17/2018) (trt) (Entered: 09/17/2018)
		* * *
11/05/2018	47	MOTION FOR REHEARING WITH SUGGESTION OF REHEARING EN BANC filed by Danny Richard Rivers. (skg) (Entered: 11/05/2018)
11/05/2018	48	AFFIDAVIT re 47 MOTION FOR REHEARING WITH SUGGESTION OF REHEARING EN BANC filed by Danny Richard Rivers. (skg) (Entered: 11/05/2018)

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DATE	NO.	PROCEEDINGS
11/19/2018	49	<p>NOTICE OF APPEAL as to 45 Judgment, to the Fifth Circuit by Danny Richard Rivers. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. <b>IMPORTANT ACTION REQUIRED:</b> Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (skg) (Entered: 11/20/2018)</p> <p style="text-align: center;">* * *</p>
11/30/2018	52	<p>ORDER: For the foregoing reasons, Petitioner's Rule 59(e) motion (ECF No. 47 ), construed as a successive habeas petition, is DISMISSED for lack of jurisdiction. For statistical purposes, the Clerk of Court is directed to open and close a new habeas action (nature of suit code</p>

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DATE	NO.	PROCEEDINGS
		530). (Ordered by Judge Reed C. O'Connor on 11/30/2018) (skg) (Entered: 11/30/2018)

\* \* \*



U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
(WICHITA FALLS)

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Civil Docket for Case #: 7:21-cv-00012-O-BP

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DANNY RICHARD RIVERS,

v.

DIRECTOR, TDCJ-CID,

---

**RELEVANT DOCKET ENTRIES**

---

DATE	NO.	PROCEEDINGS
		* * *
02/11/2021	2	PETITION for Writ of Habeas Corpus filed by Danny Richard Rivers. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at <a href="http://www.txnd.uscourts.gov">www.txnd.uscourts.gov</a> , or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (trt) (Additional attachment(s) added on 2/11/2021: # 1 envelope) (trt). (Entered: 02/11/2021)

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\* \* \*

DATE	NO.	PROCEEDINGS
07/26/2021	23	Petitioner's Motion for Evidentiary Hearing filed by Danny Richard Rivers (wxc) (Entered: 07/26/2021)
07/26/2021	24	Motion for Discovery and Expansion of the Record filed by Danny Richard Rivers (wxc) (Entered: 07/26/2021)
08/11/2021	25	FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE: The undersigned RECOMMENDS that Judge O'Connor TRANSFER the instant Petition to the Fifth Circuit for further proceedings in accordance with the provisions of 28 U.S.C. § 2244(b). Given this recommendation to transfer the Petition, the undersigned FURTHER RECOMMENDS that Judge O'Connor DEEM AS MOOT Rivers's Motion to Stay Proceedings, Motion for Evidentiary Hearing, and Motion for Discovery and Expansion of the Record (ECF Nos. 3 , 23 , and 24 ). Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. (Ordered by Magistrate Judge Hal R. Ray, Jr on 8/11/2021) (pef) (Entered: 08/12/2021)

DATE	NO.	PROCEEDINGS
09/02/2021	26	MOTION to Stay the Proceedings filed by Danny Richard Rivers. (tln) (Entered: 09/02/2021)
09/02/2021	27	OBJECTIONS to 25 FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE by Danny Richard Rivers. (tln) (Entered: 09/02/2021)
09/23/2021	28	ORDER ACCEPTING 25 FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND TRANSFERRING THIS CASE TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT: It is therefore ORDERED that the petition for writ of habeas corpus, brought pursuant to 28 U.S.C. § 2254, is hereby TRANSFERRED to the United States Court of Appeals for the Fifth Circuit. Petitioner's pending motions are DISMISSED as MOOT. (Ordered by Judge Reed C. O'Connor on 9/23/2021) (mmw) (Entered: 09/23/2021)
		* * *
10/12/2021	30	NOTICE OF APPEAL as to 28 Order Transferring Successive Habeas to Fifth Circuit,, Terminate Motions,, Order Accepting/Adopting Findings and Recommendations, to the Fifth

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DATE	NO.	PROCEEDINGS
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Circuit by Danny Richard Rivers. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (tle) (Entered: 10/12/2021)

\* \* \*

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

—————  
Docket #: 18-11490  
—————

DANNY RICHARD RIVERS,

v.

BOBBY LUMPKIN, Director, Texas Department of  
Criminal Justice, Correctional Institutions Division,

—————  
**RELEVANT DOCKET ENTRIES**

DATE	NO.	PROCEEDINGS
11/21/2018	1	PRISONER CASE WITHOUT COUNSEL docketed. NOA filed by Appellant Mr. Danny Richard Rivers [18-11490] (PAC) [Entered: 11/21/2018 08:46 AM]
11/28/2018	5	MOTION filed by Appellant Mr. Danny Richard Rivers for certificate of appealability [5]. [18-11490] (CNF)
		* * *
02/12/2020	27	MOTION filed by Appellant Mr. Danny Richard Rivers to supplement the record on appeal with with attached exhibits [27]. Date of service: 02/03/2020 [18-11490] (CNF) [Entered: 02/14/2020 03:33 PM]

DATE	NO.	PROCEEDINGS
07/09/2020	34	COURT ORDER granting Motion leave to file a supplemental certificate of appealability filed by Appellant Mr. Danny Richard Rivers [18] denying Motions to supplement the record on appeal [27], [22]; Rivers has shown that his ineffective assistance of counsel claim based on trial counsel's failure to conduct a reasonable investigation and interview witnesses deserves encouragement to proceed further. Accordingly, a COA is GRANTED on the denial of that claim. [5] [18-11490] (MFY) [Entered: 07/09/2020 09:48 AM]
		* * *
05/03/2021	61	MOTION filed by Appellant Mr. Danny Richard Rivers to examine the facts and issue the appropriate relief, etc. (The previously filed stay is now moot), etc.) [61]. [18-11490] (CNF) [Entered: 05/03/2021 11:46 AM]
		* * *
02/11/2022	76	CLERK'S RECORD EXCERPTS FILED by Appellant Mr. Danny Richard Rivers. # of Copies Provided: 0[18-11490] (CMB) [Entered: 02/11/2022 12:18 PM]
02/14/2022	77	PAPER COPIES REQUESTED for the Appellee Brief filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice,

DATE	NO.	PROCEEDINGS
		Correctional Institutions Division in 18-11490 [46]. Paper Copies of Brief due on 02/22/2022 for Appellee Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. [18-11490] (RSM) [Entered: 02/14/2022 02:55 PM]
02/14/2022	78	COURT ORDER denying Motion to stay further proceedings in this court filed by Appellant Mr. Danny Richard Rivers [57]; denying Motion to examine facts and issue appropriate relief filed by Appellant Mr. Danny Richard Rivers [61] [18-11490] (LEF) [Entered: 02/14/2022 03:00 PM]
02/18/2022	79	Paper copies of Appellee Letter Brief filed by Appellee Mr. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 18-11490 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [18-11490](CAS) [Entered: 02/18/2022 04:13 PM]
05/13/2022	86	UNPUBLISHED OPINION FILED. [18-11490 Affirmed ] Judge: PR , Judge: GJC , Judge: JCH. Mandate issue date is 06/06/2022 [18-11490] (NFD) [Entered: 05/13/2022 09:49 AM]

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DATE	NO.	PROCEEDINGS
05/13/2022	87	JUDGMENT ENTERED AND FILED. [18-11490] (NFD) [Entered: 05/13/2022 10:05 AM]
06/28/2022	99	MANDATE ISSUED. Mandate issue date satisfied. [18-11490] (RSM) [Entered: 06/28/2022 10:42 AM]
		* * *
02/03/2023	109	SUPREME COURT NOTICE that petition for writ of certiorari [109] was filed by Appellant Mr. Danny Richard Rivers on 11/06/2022. Supreme Court Number: 22-6688. [18-11490] (RSM) [Entered: 02/03/2023 03:04 PM]
04/04/2023	110	SUPREME COURT ORDER received denying petition for writ of certiorari filed by Appellant Mr. Danny Richard Rivers in 18-11490 on 04/03/2023. [110] [18-11490] (RSM) [Entered: 04/04/2023 08:10 AM]



UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Docket #: 21-10967

In re: DANNY RICHARD RIVERS  
(State Prisoner: #01775951),*Movant.***DOCKET ENTRIES**

DATE	NO.	PROCEEDINGS
09/24/2021	1	ORIGINAL PROCEEDING CASE docketed. [21-10967] (MFY) [Entered: 09/24/2021 04:19 PM]
09/24/2021	4	DISTRICT COURT ORDER of 09/23/2021 transferring successive 2254 petition to this court. Date received in 5th Circuit: 09/23/2021. Motion due on 10/25/2021 for Movant Danny Richard Rivers [21-10967] (MFY)[Entered: 09/24/2021 04:22 PM]
11/01/2021	5	IN ACCORDANCE WITH 5TH CIRCUIT RULE 42.3.1, the appeal is subject to dismissal in 15 days for failure to comply with the initial written deadline. Motion due deadline updated to 11/09/2021 for Movant Danny Richard Rivers [21-10967] (LLL) [Entered: 11/01/2021 08:44 AM]

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DATE	NO.	PROCEEDINGS
11/15/2021	6	CLERK ORDER dismissing appeal pursuant to 5th Circuit Rule 42 for failure to comply with the Court's notice of 09/24/2021 [21-10967] (MBC) [Entered: 11/15/2021 01:16 PM]

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

—————  
Docket #: 21-11031  
—————

DANNY RICHARD RIVERS,

v.

BOBBY LUMPKIN, Director, Texas Department of  
Criminal Justice, Correctional Institutions Division,  
—————

**RELEVANT DOCKET ENTRIES**

DATE	NO.	PROCEEDINGS
10/14/2021	1	PRISONER CASE WITH COUNSEL docketed. NOA filed by Appellant Mr. Danny Richard Rivers [21-11031] (MVM) [Entered: 10/14/2021 10:21 AM]
		* * *
04/15/2024	89	PUBLISHED OPINION FILED. [21-11031 Affirmed ] Judge: PR , Judge: CES , Judge: JLD Mandate issue date is 05/07/2024 [21-11031] (CAS) [Entered: 04/15/2024 09:29 AM]
04/15/2024	90	JUDGMENT ENTERED AND FILED. [21-11031] (CAS) [Entered: 04/15/2024 09:35 AM]

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DATE	NO.	PROCEEDINGS
05/15/2024	105	MANDATE ISSUED. Mandate issue date satisfied. [21-11031] (CAS) [Entered: 05/15/2024 09:40 AM]

\* \* \*

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Docket #: 24-10330

In re: DANNY RICHARD RIVERS  
(State Prisoner: #01775951),*Movant.***DOCKET ENTRIES**

DATE	NO.	PROCEEDINGS
04/15/2024	1	ORIGINAL PROCEEDING CASE docketed. [24-10330] (CAS) [Entered: 04/15/2024 10:06 AM]
04/15/2024	3	JURISDICTIONAL REVIEW COMPLETE. [24-10330] (CAS) [Entered: 04/15/2024 10:08 AM]
04/15/2024	4	DISTRICT COURT ORDER of 04/15/2024 transferring successive 2254 petition to this court. Date received in 5th Circuit: 04/15/2024. Motion due on 05/15/2024 for Movant Danny Richard Rivers [24-10330] (CAS)[Entered: 04/15/2024 10:10 AM]
05/23/2024	5	MOTION filed by Movant Mr. Danny Richard Rivers to extend time until July 15, 2024 to comply with Epps letter [5]. [24-10330] (MFY) [Entered: 05/30/2024 04:16 PM]

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DATE	NO.	PROCEEDINGS
05/31/2024	9	CLERK ORDER granting in part Motion extend time to comply with Epps letter filed by Movant Mr. Danny Richard Rivers [5] Motion due deadline updated to 06/14/2024 for Movant Danny Richard Rivers [24-10330](MFY) [Entered: 05/31/2024 09:57 AM]
06/24/2024	10	MOTION filed by Movant Mr. Danny Richard Rivers to extend time until 07/15/2024 to comply with Epps letter [10]. [24-10330] (CAG) [Entered: 06/28/2024 11:18 AM]
06/28/2024	14	CLERK ORDER granting Motion extend time to comply with Epps letter filed by Movant Mr. Danny Richard Rivers [10] Motion due deadline updated to 07/15/2024 for Movant Danny Richard Rivers [24-10330] (CAS)[Entered: 06/28/2024 02:58 PM]
07/19/2024	15	MOTION filed by Movant Mr. Danny Richard Rivers to extend time until 08/14/2024 to comply with Epps letter [15]. [24-10330] (CAG) [Entered: 07/23/2024 01:28 PM]
07/24/2024	19	CLERK ORDER denying Motion extend time to comply with Epps letter filed by Movant Mr. Danny Richard Rivers [15] [24-10330] (MFY) [Entered: 07/24/2024 09:51 AM]

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DATE	NO.	PROCEEDINGS
07/26/2024	20	CLERK ORDER dismissing appeal pursuant to 5th Circuit Rule 42 for failure to comply with the Court's notice of 04/15/2024 [24-10330] (MFY) [Entered: 07/26/2024 11:48 AM]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

PETITION FOR A WRIT OF HABEAS CORPUS BY  
A PERSON IN STATE CUSTODY

DANNY RICHARD RIVERS

PETITIONER

(Full name of Petitioner)

vs.

DIRECTOR, TDCJ—CID

RESPONDENT

(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of Petitioner)

GEORGE BETO UNIT TDCJ—ID

CURRENT PLACE OF CONFINEMENT

#1775951

PRISONER ID NUMBER

6:17CV493 RWS/UDL

CASE NUMBER

(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memo-



randum. The petition, including attachments, may not exceed 20 pages.

3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.
5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction

is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).

8. Failure to notify the court of your change of address could result in the dismissal of your case.

### **PETITION**

**What are you challenging?** (Check all that apply)

- A judgment of conviction or sentence, probation or deferred-adjudication probation (Answer Questions 1-4, 5-12 & 20-25)
- A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- Other: \_\_\_\_\_ (Answer Questions 1-4, 10-11 & 20-25)

**All petitioners must answer questions 1-4:**

**Note:** In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or

that is under attack: The 30th Judicial District Court of Wichita County, Wichita Falls, Texas 900 7th Street, Wichita Falls, Texas 76301

2. Date of judgment of conviction: February 22, 2012
3. Length of sentence: 38 years
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: Cause No. 51, 391-A\*1 & 51, 391-A\*2

**Judgment of Convictions or Sentence, Probation or Deferred-Adjudication Probation:**

5. What was your plea? (Check one)  Not Guilty  
 Guilty  Nolo Contendere
6. Kind of trial: (Check one)  Jury  Judge Only
7. Did you testify at trial?  Yes  No
8. Did you appeal the judgment of conviction?  
 Yes  No
9. If you did appeal, in what appellate court did you file your direct appeal? 8th Court of Appeals El Paso, Texas Cause Number (if known): 08-12-00145-CR

What was the result of your direct appeal (affirmed, modified or reversed)? Affirmed

What was the date of that decision? July 23, 2014

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: Improper juror empaneled for my trial.

Result: Refused

Date of result: January 14, 2015 Cause Number  
(if known): PD-1104-14

If you filed a petition for a *writ of certiorari* with  
the United States Supreme Court, answer the  
following:

Result: N/A

Date of result: N/A

10. Other than a direct appeal, have you  
filed any petitions, applications or motions  
from this judgment in any court, state or federal?  
This includes any state applications for a writ  
of habeas corpus that you may have filed.  
 Yes  No

11. If your answer to 10 is "Yes," give the following  
information:

Name of court: Texas Court of Criminal Appeals

Nature of proceeding: Writ of habeas Corpus  
pursuant to Chapter 11.07 CCP.

Cause number (if known): WR-84,550-01 WR-84,  
550-02

Date (month, day and year) you filed the petition,  
application or motion as shown from the stamped  
date from the particular court: \_\_\_\_\_

Grounds raised: (Grounds 1 & 2) Ineffective Asst.  
of Counsel; (Ground 3) Prejud. biased jurist;  
(4) Prosecutorial misconduct; (5) Unconst.  
application of statute; (6) Improper Grand  
Jury/const. viol.

Date of final decision: 6-7-2017; (no white card  
given); Discovered via family phone call 8-11-17.

What was the decision? Denied WITH written order. Order requested / no response to request.

Name of court that issued the final decision: Texas court of Criminal Appeals

As to any second petition, application or motion, give the same information:

Name of court: 379th Judicial District Court

Nature of proceeding: Request for Court of Inquiry - Criminal/ As Supporting Investigation/ Witness

Cause number (if known): 2016-W-0415

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court:

November 18th, 2016

Grounds raised: Obstruction of Justice 18 USC § Chapter 73 Et. Al.

Date of final decision: PENDING ON APPEAL

What was the decision? [See Attachment - Page 4a]

Name of court that issued the final decision: 379th Judicial Dist. Court Bexar County, Tx.

*If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.*

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition?  Yes  No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: N/A

(b) Give the date and length of the sentence to be served in the future: N/A

(c) Have you filed, or do you intend to file, any petition attacking the judgment of the sentence you must serve in the future?  Yes  No

**Parole Revocation:**

13. Date and location of your parole revocation: N/A

14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation?  Yes  No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

**Disciplinary Proceedings:**

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?  Yes  No

16. Are you eligible for release on mandatory supervision?  Yes  No

17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:

\_\_\_\_\_

Disciplinary case number: \_\_\_\_\_

What was the nature of the disciplinary charge against you? \_\_\_\_\_

18. Date you were found guilty of the disciplinary violation: \_\_\_\_\_

Did you lose previously earned good-time days?  Yes  No

If your answer is "Yes," provide the exact number of previously earned good-time days that were

forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

\_\_\_\_\_

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?  Yes  No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result:\_\_\_\_\_

Date of Result:\_\_\_\_\_

Step 2 Result:\_\_\_\_\_

Date of Result:\_\_\_\_\_

**All petitioners must answer the remaining questions:**

- 20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you

may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE:** Ineffective Assistance of Trial counsel in failing to do objectively reasonable investigation into mitigating evid. and in the totality of representation causing inprop. conviction.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel did not conduct an object. reasonable investigation based upon both the information provided by Applicant and available from States evid. or further inquiries. Counsels own statements made pursuant to an evid. hearing raise reasonable doubt. Only 1 of 3 counsels responded to interrog. posed to them. Counsel failed to call/prepare/utilize witness testimony as proved by affidavits, did not use court records to impeach and allowed unconstitutional presentation during voir dire.

- B. **GROUND TWO:** Ineffective assistance of Appellate counsel in failing to do object. Reasonable investigation into mitigating evid. and in the totality of representation allowing convict. to stand

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Mark Barber, 1 of 3 trial counsel, was selected to represent me for my appeal despite a known conflict of interest. Barber did absolutely NOTHING to assist me in my appeal being replaced by court order. Dustin Nimz also failed



miserably, not conferring a single time with applicant, did no investigation, made no contact with trial counsel, failed to cure existent defects to deny new trial motion: and did not present all viable grounds for my direct appeal, foreclosing any possibility of success on appeal.

**C. GROUND THREE:** Improper, prejudicial, and biased Jurist empaneled in violation of US Constitution (Amends. 5, 6, and 14), resulting in illegal conviction and sentencing.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

A Juror was empaneled for my trial who had prior contact with the alleged victims basis my convictions which was significant and material. The jurist in question failed to disclose his having been the alleged victims soccer coach, that he had direct contact with the victims and their families, and had direct observation knowledge of the behaviors of the alleged victim, and during trial had direct contact with persons who opposed applicant, none of which was properly developed.

**D. GROUND FOUR:** Prosecutorial Misconduct – for improper, prejudicial, and biased voir dire presentation to jury resulting in constitutionality unfair proceedings and unlawful convictions.

Supporting facts (do not argue or cite law. Just state the specific facts that support your claim.):

The prosecutor, John Gillespie, used a “Power Point Presentation” at voir dire which contained obvious, unconstitutionally prejudicial and biased materials which improperly influenced potential jurists by using an association between applicants

employment and “infamous” criminals to inflame and influence jurists and directly pointed to applicant to confirm the improper association. and said “appearance can be deceiving” comparing applicant to Ted Bundy-denying a fair panel for trial.

21. Relief sought in this petition: Petitioner believes that his constitutional right to due Process was violated by the improper impaneling of the Grand Jury where his right to participation in that process was abridged; that officials acts called into question via Chapter 52 CCP was not properly addressed by trial court or Court of Crim. Appeals; that 11.07 should have been stayed for commencement of court of inquiry. That Petitioners counsels at trial and on appeal were const. ineffective, and that trial court disallowed Petitioner valuable resources at evidentiary hearing, and made improper rulings/findings, that prosecutors tainted the jury pool at voir dire; and that the offense charged was improperly used/unsupported/unconstitutional – requiring reversal/remand.

**E. GROUND FIVE:** Unconstitutional application of Statute in violation of rights of applicant, and the Constitutional insufficiency of the evidence to support same and the resulting conviction. Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The primary offense for which applicant was convicted, Continuous Sexual Abuse of a child, was unconstitutionally applied to applicant, infringing on his constitutional rights, resulting in unequal protection of the law. Applicant had no prior felony conviction to warrant this statutes

application. The statute was incorporated for the sole purpose to incorporate minimum sentencing. The statute does not qualify under the designation applied to applicant regarding parole eligibility.

**F. GROUND SIX:** Denial of Constitutional rights and equal protect. of state statute provisions in Grand Jury proceedings, resulting in illegal warrants, unauthorized indictments and unlawful convictions- Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Applicant challenged the validity of the Grand Jury proceedings as utilized by the State to obtain warrants/indictments and procur alleged lawful jurisdiction. Applicant was denied due process when the mandatory statutory provisions of the Code.Crim.Proc. were abrogated. Additionally, Applicant timely presented a motion requesting commencement of a court of inquiry, the trial judge failed to mandatorily disqualify himself, and made rulings on same affecting claim in federal court jurisdiction.

22. Have you previously filed a federal habeus petition attacking the same conviction revocation or disciplinary proceeding that you are attacking in this petition?  Yes  No

If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

N/A

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If you previously filed a federal petition attacking the same conviction and such petition was denied

or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)?  Yes  No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?  Yes  No

If your answer is “Yes,” state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

N/A  
\_\_\_\_\_  
\_\_\_\_\_

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If “Yes,” identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed. Request for Court of Inquiry-Investigation / 1). Case # 2016-W-0415 Nov. 18, 2016, 379th Judicial Dist. Court / 2). Case # 16-00-7848/7843 Nov. 18, 2016, 219th Judicial Dist. Court / 3). Case # 132165 Feb. 12, 2017, 54th Judicial Dist. Court / 4). Case # 17188-0631 July 7, 2017, 340th Judicial Dist. Court

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: Rick Mahler:  
900 8th St., Ste 425, Wichita Falls, Tx.  
76301-6809
- (b) At arraignment and plea: Rick Mahler
- (c) At trial: Rick Mahler and: Mark Barber,  
900 8th St., Ste 116, Wichita Falls, Tx.  
76301-6802 Frank Trotter, 1401 Holiday  
St., Ste 206, Wichita Falls, Tx 76301-7146
- (d) At sentencing: Rick Mahler, Mark Barber  
Frank Trotter
- (e) On appeal: Mark Barber then: Dustin E.  
Nimz 900 8th St., Ste 1400, Wichita Falls,  
Tx. 76301-6814
- (f) In any post-conviction proceeding: Counsel  
recommended by TOCA – denied by Trial  
Court.
- (g) On appeal from any ruling against you in a  
post-conviction proceeding: \_\_\_\_\_

**Timeliness of Petition:**

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.<sup>1</sup>

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<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), as contained in 28 U.S.C. § 2244(d), provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in

02-22-2012: Conviction entered. Direct Appeal taken within 30 days. 07-23-2014 Direct Appeal Affirmed. Petition for Discretionary review immediately filed. P.D.R. refused on 01-14-2015.

Writ of Habeas Corpus submitted 12-15-2015 (335 days of ADEPA clock used). 11.07 Denied with written order on 06-07-2017 (NO WHITE CARD SENT)

**Verified not received by TDCJ mailroom on 8-18-17**

4 motions sent on 7-29-17 – white cards dismissing motions sent on 8-7-17 said nothing on status of 11.07 Writ of Habeas Corpus § 2254 sent at first opportunity after detaining required forms. See: Affidavit.

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custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

N/A  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on Aug. 25, 2017 (month, day, year).

Executed (signed) on Aug. 25, 2017 (date).

/s/ Danny Richard Rivers  
Signature of Petitioner (required)

Petitioner's current address: Beto Unit 1391 Fm 3328  
Tennessee Colony, Tx. 75880

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

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Civil Action No. 7:17-cv-124-O-BP

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DANNY RICHARD RIVERS,

*Petitioner,*

v.

LORIE DAVIS, Director, Texas Department of  
Criminal Justice, Correctional Institutions Division,

*Respondent.*

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ORDER

Before the Court is Petitioner's "Motion for Rehearing with Suggestion of Rehearing En Banc." ECF No. 47. Upon review of the motion and of the record in this case, the Court finds and orders as follows:

Petitioner states that he seeks a rehearing on the ruling of this Court pursuant to Federal Rules of Appellate Procedure 35(c) and 40(a). *See id.* at 1. The Rules of Appellate Procedure do not apply to district court proceedings. *See Smith v. Compass Rose Servs., Inc.*, No. CIV. A. 95-3675, 1998 WL 92283, at \*1 (E.D. La. Mar. 2, 1998) (citing Fed. R. App. P. 1(a) and finding that "Rule of Appellate Procedure 40(a) does not apply to motions for reconsideration presented to a district court.>").

The Court finds that Petitioner's motion should be construed as being filed under Federal Rule of Civil Procedure 59(e). *Johnson v. Davis*, No. 18-20052, 2018



WL 5919562, at \*1 (5th Cir. Nov. 9, 2018) (construing a Rule 60(b) motion, filed within 28 days of the entry of judgment, as a motion filed under Rule 59(e)) (citing *Mangieri v. Clifton*, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994) and *Harcon Barge Co. v. D & G Boat Rentals, Inc.*, 784 F.2d 665, 668-69 (5th Cir. 1986) (en banc)).

Rule 59(e) mandates that “[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment.” Judgment in this case was entered on September 17, 2018. The deadline for filing a Rule 59 motion was October 15, 2018. Petitioner’s motion was tendered to prison authorities for mailing on October 26, 2018. Although the Rule 59(e) motion appears untimely, Petitioner has submitted an affidavit verifying that he did not receive the Court’s order denying habeas relief until October 15, 2018. *See* ECF No. 48. Review of the record in this case supports Petitioner’s sworn statement. In the order denying habeas relief, the Court stated:

In his objections, Petitioner states that he is not confined in the Allred Unit in Iowa Park, Texas. Rather, he is confined in the McConnell Unit in Beeville, Texas. Based on Petitioner’s statement and on the return address on the envelope in which his objections were submitted, the **Clerk of Court** shall update Petitioner’s address on the docket sheet to reflect that he has moved to the McConnell Unit.

ECF No. 44 at 2. Unfortunately, through clerical oversight, the Court’s order denying relief and final judgment were mailed to Petitioner at the Beto Unit in Tennessee Colony, Texas, rather than the McConnell Unit in Beeville, Texas. *See* Notice of Change of Address, ECF No. 35. Petitioner’s address

has now been updated to reflect that he is confined in the McConnell Unit. *See* ECF No. 51.

In light of the circumstances, the Court finds that Petitioner's Rule 59(e) motion, filed 21 days after he received the Court's order and judgment, is timely. *See Johnson v. Louisiana*, No. CIV. A. 01-2002, 2007 WL 2874481, at \*1 n.2 (E.D. La. Sept. 26, 2007) (deeming habeas petitioner's Rule 59(e) motion timely where petitioner met the filing deadline as determined from the date he received the court's final judgment).

"A motion to alter or amend judgment under Rule 59(e) must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Schiller v. Physicians Resource Group Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (internal quotations omitted). Although a district court has considerable discretion in deciding whether to amend or alter a judgment, the court must "strike the proper balance between the need for finality and the need to render just decisions on the basis of all the facts." *Hale v. Townley*, 45 F.3d 914, 921 (5th Cir. 1995). With this balance in mind, the Fifth Circuit has observed that Rule 59(e) motions are disfavored and should be granted only sparingly. *See Southern Constructors Group, Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir.1993).

While a habeas petitioner may file a Rule 59(e) motion to alter or amend judgment, the Antiterrorism and Effective Death Penalty Act of 1996 limits the circumstances under which a state prisoner may file a second or successive application for habeas relief in federal court. In general, a later petition is successive when it raises a claim challenging the petitioner's

conviction or sentence that was or could have been raised in an earlier petition or otherwise constitutes an abuse of the writ. *Leal Garcia v. Quarterman*, 573 F.3d 214, 222 (5th Cir. 2009); *Crone v. Cockrell*, 324 F.3d 833, 836-37 (5th Cir. 2003).

In *Gonzalez v. Crosby*, 545 U.S. 524 (2005), the United States Supreme Court held that a motion filed under Rule 60, Federal Rules of Civil Procedure, that “seeks to add a new ground for relief” or “attacks the federal court’s previous resolution of a claim on the merits” is a successive 28 U.S.C. § 2254 petition. 545 U.S. at 532. “Conversely, [the court] should not treat a postjudgment motion as a successive § 2254 application when the motion asserts that a previous ruling which precluded a merits determination was in error—for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar or when the motion attacks some defect in the integrity of the federal habeas proceedings.” *Uranga v. Davis*, 893 F.3d 282, 284 (5th Cir. 2018) (internal quotations omitted). The United States Court of Appeals for the Fifth Circuit has applied *Gonzalez* to Rule 59 motions. *See Williams v. Thaler*, 602 F.3d 291, 303-04 (5th Cir. 2010); *United States v. Patton*, No. 17-10942, \_\_\_ Fed. App’x \_\_\_, 2018 WL 4328623, at \*2–3 (5th Cir. Sept. 10, 2018) (per curiam) (unpublished).

In the instant case, Petitioner sought habeas relief on grounds of ineffective assistance of trial counsel, ineffective assistance of appellate counsel, denial of an impartial jury, denial of a fair trial due to prosecutorial misconduct, the unconstitutionality of Article 21.02 of the Texas Penal Code, unconstitutional proceedings of his grand jury selection, and judicial impropriety. *See Petition*, ECF No. 1 at 6-8; *Motion for Leave to Amend*, ECF No. 27 at 8-10. His

claims were reviewed by the Court and habeas relief was denied on the merits. *See* Findings, Conclusions, and Recommendation of the United States Magistrate Judge, ECF No. 38; Order Accepting Findings, Conclusions, and Recommendation of the United States Magistrate Judge, ECF No. 44. In the instant motion, Petitioner attacks the Court's previous resolution of his claims on the merits and he expounds on his arguments in support of his grounds for relief. Therefore, the instant motion constitutes a successive Section 2254 habeas petition.

When a habeas petition is second or successive, the petitioner must seek an order from the Fifth Circuit Court of Appeals that authorizes this Court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Because the instant motion is a successive habeas petition, this Court is without jurisdiction to entertain the petition unless leave to file is granted by the Fifth Circuit. *See Crone, supra*.

For the foregoing reasons, Petitioner's Rule 59(e) motion (ECF No. 47), construed as a successive habeas petition, is DISMISSED for lack of jurisdiction.

For statistical purposes, the Clerk of Court is directed to open and close a new habeas action (nature of suit code 530).

SO ORDERED this 30th day of November, 2018.

/s/ Reed O'Connor  
Reed O'Connor  
United States District Judge

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 7:17-cv-00124-o-bp

COA No. 1811.490

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DANNY R. RIVERS, JR., Pro Se

v.

LORIE DAVIS, TDCJ-DIRECTOR

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MOTION TO SUPPLEMENT THE RECORD WITH  
AFFIDAVIT AND REAL EVIDENCE TO SHOW  
ACTUAL INNOCENCE ON COUNTS 5 AND 6

In this Motion to Supplement the Record of my currently pending COA, I, Danny R. Rivers, Jr., move this Court to review the attached affidavit and exhibits that establish a “Factual predicate” as used in §2244(d)(1)(D) demonstrating ‘vital facts’ giving clear and convincing exculpatory evidence showing actual innocence in counts 5 and 6. This claim of actual innocence could not have been previously or properly stated in my original application for writ of habeas corpus due to ineffective assistance of counsel, whereas, unbeknownst to me, counsel had in their possession exculpatory exonerating evidence prior to trial, at trial, and on appeal that they failed to raise.

In RIVAS V. FISCHER, 687 F.3d 514 (CA 2 2012) page 535, “congress did not provide a definition of the term ‘factual predicate’, as used in §2244(d)(1)(D); nor have we previously had the occasion to offer one. Those courts that have given meaning to the term agree that

a factual predicate consists only of the ‘vital facts’ underlying the claim. *McALEESE V. BRENNAN*, 483 F.3d 206, 214(CA 3 2007); See also *FLANAGAN V. JOHNSON*, 154 F3d 196,199 (5th cir. 1998). We agree. The facts vital to a habeas claim are those without which the claim would necessarily be dismissed under Rule 4 of the rules governing §2254 cases in the United States District Courts (Requiring a District Judge to dismiss a petition “[If] it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief”).

Accordingly, if new information is discovered that merely supports or strengthens a claim that could have been properly stated without the discovery, that information is not a “factual predicate” for purposes of triggering the statute of limitations under §2244(d)(1)(D). See *McALEESE* 483 F3d at 214 . . . Furthermore, it should go without saying that a factual predicate must consist of facts.

Conclusions drawn from pre-existing facts, even if the conclusions are themselves new, are not factual predicates for a claim.”

These new facts are clear and convincing evidence of a “fundamental miscarriage of justice”. See *DRETKE V. HALEY*, 541 U.S. 386, 158 L.Ed 2d 659, 124 S.Ct. 1847 (2004) see pages 1852 and 1853; see also *MURRY V. CARRIER*, 477 U.S. 478 (1986); see also *HAYES V. BATTAGLIA*, 403 F3d 935(CA7 2005) p.938 [ . . . ] Proof of innocence must be considerably more than the proof required to establish prejudice. See *SCHLUP V. DELO*, 513 U.S. 298, 321, 115 S.Ct 851 . . . (1995).

To demonstrate innocence so convincingly that no reasonable jury could convict, a prisoner, must have

documentary, biological (DNA), or other powerful evidence: perhaps some non-relative who placed him out of the city, with credit card slips, photographs, and phone records to back up the claim. See SCHLUP, 513 U.S. at 324.

In the instant case, contained within the attorney/client files I received on October 22, 2019 from attorney Rick Mahler, was the investigators report from the states lead investigator, Detective Raymond Perry. These long-requested client files were released as a result of State Bar Grievance #201905063.

Contained within Detective Perry's report was evidence that the video and image that the state used for conviction of counts 5 and 6 of my trial for Possession of Child Pornography, had already been found by experts to be NOT CHILD PORN.

Detective Perry, a trained professional in cyber sex crimes and child pornography investigations, and armed with and FBI developed Image Scan Program, conducted and initial investigation of a laptop found in my home. He investigated fourteen (14) files saved in the "Limewire" program and ultimately labelled all 14 files as either "NOT CHILD PORN" or "adult porn".

In Detective Perry's supplemental report he summarizes the forensic findings of Detective Fox from North Texas Regional Computer Forensic Lab (NTRCFL) in Dallas, Texas. Detective Fox notates "one image and two videos of intrest" saved to the Limewire program that Detective Perry had previously discounted as being child pornography. Despite being "of intrest" to Detective Fox, he labels the image specifically as NOT CHILD PORN. (his emphasis).

This evidence was, not raised at trial by my counsel. I was convicted of the image listed above and of one of

the videos of interest” that Detective Perry’s investigation yielded as “adult” porn.

The attached affidavit and exhibits establish the facts to support my actual innocence of Possession of Child Pornography. They also establish that had counsel raised this evidence in their Motion to Sever hearing that charges of Possession of Child Pornography would have never been admitted at my trial for Sexual Abuse of a Child of which the only evidence against me was testimony of the alleged victim.

The Severance Motion was denied whereas the Judge determined that the two counts of child pornography were permissible for the state to prove the elements of intent and state of mind to the sexual abuse charges.

While I certainly understand that I must exhaust state remedies before the federal courts can adjudicate this claim, and I am, I felt it prudent to bring these relevant and material facts of ineffective assistance of counsel to this Court so that the facts are not withheld as this court makes its determination on COA that derives from my claim of ineffective assistance of counsel.

Wherefore, premises considered, I respectfully request and move the court to consider the attached affidavit of Danny Richard Rivers, Jr and its exhibits to be supplemented to the record in conjunction with my original COA and previously filed supplements. I submit this motion and evidence so that justice can be done in consideration of my COA.



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Respectfully submitted,

/s/ Danny Richard Rivers, Jr.

Danny Richard Rivers, Jr.

TDCJ# 01775951

McConnell Unit

3001 S. Emily Dr.

Beeville, Tx. 78102

I, Danny Richard Rivers, Jr., do certify that I placed a true copy of this Motion to Supplement the Record in the provided prison TDCJ mailbox with proper, prepaid postage on 3rd day of February 2020.

x Danny Richard Rivers, Jr.

Danny Richard Rivers, Jr.

TDCJ# 01775951

## AFFIDAVIT OF DANNY RICHARD RIVERS JR

I, Danny Richard Rivers, Jr., am qualified to make this affidavit, that the following is true and correct under penalty of perjury, and having personal knowledge of the facts her in, I do swear under the penalty of perjury according to title 28 U.S.C. § 1746 to the following:

I recently obtained evidence<sup>1</sup> that was in possession of my defense counsel that could have been produced to show actual innocence. The facts surrounding said evidence is as follows:

The alleged victim in the case against me disclosed to the States investigator, Detective Raymond Perry, that I had pornography on a laptop computer that allegedly contained adult and also possibly children. A search warrant was issued and the laptop, among other items, was confiscated from my residence on #4 Buttercup Cricle, Wichita Falls, Texas.

Detective Perry a trained professional in cyber sex crimes and child pornography investigations, and armed with an FBI developed Image Scan Program, conducted an. initial investigation on the laptop computer. (See RR-vol 8, pg 125-126 for qualifications; See Exhibit 1A pg 9 pf 15 - Initial Investigative Report)

On November 16, 2009, his investigation revealed fourteen (14) images of pornography saved to the desktop in the Limewire program file under: documents and settings/christirivers/mydocuments/Lime

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<sup>1</sup> See Exhibit 8A-8b, Attorney Mahler's response to State Bar.

wire/save.<sup>2</sup> Perry placed the images on a C.D. and labelled them, adult porn. (See Exhibit 1A)

With this in hand, on February 17, 2010, the State took this case to its initial grand jury proceeding. (See Exhibit 3 - initial indictment). No arrest warrants were issued for possession of child pornography and the State did not pursue an indictment for possession of child pornography. Detective Perry did, however, send the laptop to the North Texas Regional Computer Forensic Laboratory (NTRCFL) for further investigation.

On February 24, 2010, Detective Perry received the results from NTRCFL.<sup>3</sup> At this time, Defense Counsel Rick Mahler called and notified me that the States computer investigation was complete and that the State was not pursuing charges in relation to that investigation.

Four months later, on June 16, 2010, the State, in its second grand jury hearing to add charges, did not pursue charges of possession of child pornography. The State was pursuing indictments for continuous sexual abuse but the grand jury did not return such, but instead added four (4) counts of Aggravated Sexual Assault. Four Capias' were issued for Aggravated Sexual Assault.<sup>4</sup> Nothing for possession of child pornography.

Over one year later, on August 12, 2011, in a third trip to the grand jury, with no new evidence in regards

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<sup>2</sup> Christi Rivers is my estranged wife who's initial complaint sparked this investigation and who had access to my residence and the laptop computer.

<sup>3</sup> See: Exhibit 1C.

<sup>4</sup> See: Exhibit 4 - A,B,C,D.

to the laptop computer investigation, the State seeks and receives an indictment for two counts of Possession of Child Pornography and also now receives the previously requested, but not indicted, Continuous Sexual Abuse charges. The ONLY evidence in the record that was presented to the grand jury pertaining to the pornography was an invalid affidavit by the State that an “affiant” appeared before the Assistant D.A. and that said “affiant” did so believe that I knowingly possessed child pornography. There is no sworn statement against the penalty of perjury, there is no name of the “affiant”, nor the Assistant D.A. for that matter, and there is no notary.<sup>30</sup>

I was adamant with my attorneys from the beginning that I had never downloaded child pornography.<sup>5</sup> After I was indicted for the child pornography, Defense Counsel Mark barber requested an extension with the court in order to obtain an expert to examine the laptop based on my assertions and the aforementioned suspicious facts, and an extension was granted.<sup>6</sup> However, counsel never actually consulted or obtained an expert.

Counsel did, however, move the court to sever the alleged Child Pornography charges from the sexual abuse trial. Their position being that a trial should be held to adjudicate the pornography to assure that I’m actually guilty of such prior to entering such into a child sexual abuse case. Counsels theory being that once you start alleging Child Pornography, even if it’s

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<sup>30</sup> See: Exhibit 5A, 5B - affidavit to grand jury.

<sup>5</sup> See: Attorney Rick Mahler Affidavit p.4; Mark Barber Affidavit p.5; Frank Trotter Affidavit p.3 in response to original 11.07 IAC claim.

<sup>6</sup> See; Exhibit 6, Motion for Continuance to obtain experts.

not proven, you've put the skunk in the box" where the jury is concerned and that you won't be able to remove that taint.<sup>7</sup>

The States position was that it was in fact Child pornography and that with no eyewitnesses, medical, DNA, confessions, or corroborating evidence, that the "child pornography" was essential as motive evidence to prove intent and state of mind of the defendant. Both of which are elemental to the sexual abuse charges.<sup>8</sup>

The State repeatedly represented the photo and video as "child pornography" and ultimately the Judge, after two hearings, sides with the State and denies severance stating that: "the child pornography, the two counts, is admissible to show motive of the defendant."<sup>9</sup>

Through corroborating testimony, it was established that I had been working out of town in the months leading up to the search warrant and specifically the last several weeks before the search warrant. It was established that I was not the only adult living in the house or the only person who had access to the laptop and/or the house. It was established that my estranged wife had access to the house and did in fact enter the house, against court orders, while I was out of town

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<sup>7</sup> See: Exhibit 9 & 11 Defenses severance motion; See also Severance hearing, RR vol 2, pgs 5-15; Second Severance hearing, RR vol 3, pgs. 4-19.

<sup>8</sup> See: Severance hearing, RR vol 2, pg 11; See also Exhibit 10 - States motion to deny severance.

<sup>9</sup> See: RR vol 3, pg 17.

during the time frame the alleged child porn was downloaded.<sup>10</sup>

In the early stages of the States case in chief, the State brought forth E.R. technician, Dr. Scott Meyers, to testify as to his opinion of the ages of the females in the photo and video that I was allegedly indicted for. Defense counsel objected to this opinion on the basis that the video and photo had not been offered into evidence and thus, Dr. Meyers was testifying to evidence that does not exist. The state complained of scheduling difficulties. The trial judge overruled multiple objections and allowed the testimony.<sup>11</sup>

Meyers testified that in his opinion that the image and video contained females under the age of 18 but could not recall the images or describe them in any detail.<sup>12</sup> He testified that he had viewed more than two images and the state did specify the title of the photo but only referenced the video as “video”. On this record, we do not know which “video” he was giving an opinion to Defense counsel did not cross examine the witness.

On the last day of the States case in chief, the State presented their final witness, Detective Fox from NTRCFL. He testified that he found one image and two videos of “intrest” in his investigation and showed them to the jury. Fox also testified that “there were two KFF alerts which is a Know File Filter which the FBI put out a list of known files that are either child porn or know hacking, terrorist cookbooks, for files

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<sup>10</sup> See: RR vol 8, p150-152; p168(19-25); p169(1-12); p171(19-25); p172(1-13).

<sup>11</sup> See: RR vol 9, pg 16,17.

<sup>12</sup> See; RR vol 9, pg 17,18.

that they deem as questionable just to help us sort through a whole mess of it. In this case, there were just run of the mill false positives. There was nothing important about those hits.”<sup>13</sup>

Fox testifies that he found a single image of interest in Limewire under My Documents, user name Christi Rivers.<sup>14</sup> The he testifies that he found two videos of interest saved to Limewire as well, and that they were not deleted files, but saved and clearly accessible.<sup>15</sup>

Detective Raymond Perry’ investigation yielded fourteen (14) saved Limewire files. Detective Fox’s video and image of interest came from saved Limewire files. All images and videos saved under mydocuments/christirivers, thus establishing that Perry and Fox were reviewing the SAME content.

Defense counsel called an alibi witness (though inadequately prepared) to testify that he worked for me and that we were in fact out of town for at least one of the download dates.<sup>16</sup> Defense counsel failed to interview or call additional alibi witnesses.<sup>17</sup> Defense counsel did say at closing: “they showed you pornography. They say it’s child porn. Okay, I didn’t see it.”<sup>18</sup>

The state in their closing arguments made numerous remarks in regards to “child pornography”. In the States initial closing the D.A. states: “Last week was a long week. The testimony was emotional, it’s tough

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<sup>13</sup> See: RR vol 10, pg 26, lines 21-25 and pg 27 lines 1-4.

<sup>14</sup> See: RR vol 10, pg 28.

<sup>15</sup> See: RR vol 10, pg 30,31.

<sup>16</sup> See: Affidavit of Antonio Fernandez.

<sup>17</sup> See: Affidavit of Danny Rivers, Sr.

<sup>18</sup> See: RR vol 11, pg 34.

to listen to. You had to view child pornography and that's difficult to watch."<sup>19</sup> In their final closing argument, the D.A. states: ". . . the video, the disgusting video you all viewed"; and "you saw the picture. It's a young girl topless. She looks incredibly young in that picture."<sup>20</sup> Then, "he grooms her by showing her the same—I mean, the videos of adult and child pornography."<sup>21</sup> Then, "and you heard about all the child pornography. I'm not going to show it to you again. I think you've seen it."<sup>22</sup> Then, "and you saw the porn . . . that they also found the child pornography that confirms what the girl said."<sup>23</sup>

During jury deliberations, the jury sent out a note with a question as to certain "terms" in States Exhibit 33. States Exhibit 33 was Detective Fox's "video and image of intrest". The court decided to answer "I don't know or not allowed to provide that."<sup>24</sup> It could be deduced that the term "intrest" instead of "child pornography" was relevant to the jury but they received no clarity on the matter.

In fact, the jury initially filled out the NOT GUILTY verdict form for count 5 for Possession of Child Pornography and then changed their decision to Guilty.<sup>25</sup> The State may contend that it was an accident, however, they had already completed four(4)

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<sup>19</sup> See: RR vol 11, pg 9.

<sup>20</sup> See: RR vol 11, pg 18 and 19.

<sup>21</sup> See: RR vol 11, pg 61.

<sup>22</sup> See: RR vol 11, pg 68.

<sup>23</sup> See: RR vol 11, pg 69.

<sup>24</sup> See: RR vol 10, pg 23, lines 25, pg 24, lines 1-3; Jury note, vol 11, p 89.

<sup>25</sup> See: Exhibit 7 not guilty verdict sheet.



verdict sheets without mistake, which leans towards evidence of indecisiveness when considering the pornography counts.

I was ultimately found guilty of two counts of possession of child pornography. The titles of the images described by the State in closing arguments in reference to the charged offenses correspond with Detective Fox's video and image of interest in his forensic findings that he showed to the court during his testimony.<sup>26</sup>

Through the intervention of the State Bar of Texas, I recently obtained, long requested but denied, Attorney/Client files from Attorney Rick Mahler on October 22, 2019.<sup>27</sup>

Contained within the Attorney/Client files was Detective Raymond Perry's investigative report. This was the first time I have had the opportunity to view the contents of that report. Upon review of Perry's investigation of the laptop, it shows that Perry found fourteen (14) files in the Limewire account through the use of FBI Image Scan Program. He then goes on to investigate all fourteen (14) image/videos and labels every one of them as either "NOT CHILD PORN" or as "adult porn".<sup>28</sup>

One of the videos reviewed by Perry on page 10 of 14 of his report is: "5) Two females and a male adult". This description matches the video shown by Detective Fox at trial which I was convicted of. The video

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<sup>26</sup> See: RR vol 9, p 15 and 18 - Scott Meyers testimony; See also vol 11, p 18, 19 - States closing jury argument.

<sup>27</sup> See: Exhibit 11 - Letter to Rick Mahler, Exhibit 8 - A&B-Mahler's response to State Bar.

<sup>28</sup> See: Exhibit 1A & 1B - Perry's report.

depicted two females and a male adult. Fox labels this video as a “video of intrest” while Perry labels it as “adult porn”.<sup>29</sup>

Image number 8 on Perry’s list of adult porn is labelled “18-year old female exposing herself” which is the only description I see that matches Fox’s “image of intrest”, “a girl exposing herself”.<sup>28</sup>

In Perry’s supplemental report, Perry summarizes NTRCFL’s Detective Fox’s findings showing one (1) image of intrest and two (2) videos of intrest contained in Limewire.<sup>29</sup> The image of intrest is the third item and clearly labelled NOT CHILD PORN. The second item on Fox’s list of “intrest” was a video shown at trial but one in which I was not indicted for. Clearly, “video/image of intrest” does mean Child Porn. Especially considering that Perry had already discounted the saved Limewire files as being adult porn.

The video and image was not shown to the grand jury. The video (approx. 15 seconds) was shown to the trial jury once. The image was shown to the trial jury once for approximately ten (10) seconds. The jury was repeatedly told that the video and image in question was child porn. The jury was repeatedly told throughout trial by the State that I possessed child porn, before they were ever able to briefly view the material. Dr. Meyers testified that in his opinion, two of an array of images that he viewed contained females under the age of 18. The state selects two of that array days later and tells the jury that his testimony

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<sup>29</sup> See: Exhibit 1C - Perry’s supplemental report/forensic findings.

<sup>28</sup> See: Exhibit 1A & 1B - Perry’s report.

<sup>29</sup> See: Exhibit 1C - Perry’s supplemental report/forensic findings.

pertained to those. Dr. Meyers report was never made part of the record so I don't see that we will ever be able to determine just what Dr. Meyers was testifying to.

The jury was never made aware that the States Investigator (Perry) and the States forensic Expert (Fox) had already made factual determinations that the image/video's used to convict me were "NOT CHILD PORN". Yet, even so, the jury questions the term "video/image of interest" (but got no response); initially filled out the NOT GUILTY verdict sheet before changing their minds, and assessed the bare minimum punishment, and the judge, after stacking the sexual abuse charges, runs the Child pornography counts concurrent with count 1.

Defense counsel failed to produce the exculpatory evidence in its possession as proof of actual innocence in the Motion to Sever hearings, thus allowing the State to continue in its fraudulent pursuit of alleged child pornography. The State wanted the "child porn" to show motive to prove intent and state of mind on the remaining sexual abuse allegations and the judge granted it for those reasons.

Defense Counsel failed to raise this exculpatory evidence in the guilt/innocence phase of trial to impeach or rebut the States experts.

Defense counsel failed to support their objections to the testimony and opinion of Dr. Scott Meyers in that the rules of evidence state:

"when the contents of the photo or film really are what is being proved, the photo or film must be introduced rather than be described by oral testimony." (See pg 475 of Emanuels Law, Outlines - Evidence - 8th Edition - Steven E. Emanuel); See also,

Best Evidence Rule, pg 471, “The Best Evidence Rule might be better called the Original Document Rule. The rule is this; ‘An original writing, recording, or photograph is required in order to prove it’s content unless these rules of a federal statute provides otherwise.’”

See also pg 472 - Requirements (2) for photographic evidence. It includes videos.

Counsel Mark Barber obtained a continuance in order to obtain an expert to review the alleged child pornography but failed to do so despite admitting that I denied possessing any child pornography in our “privileged conversations”.

Defense counsel failed to subpoena phone records to show that I was in fact out of town specifically during the download times.

Defense counsel failed to prepare alibi witness Antonio Fernandez and failed to interview or call corroborating alibi witnesses.

To say that Counsel’s ineffectiveness in the Severance hearings and at trial where the Child Pornography counts are concerned had an impact on the jury’s determination on counts 1–4 for child sexual abuse would be an understatement. It also shines an even brighter light on the affidavits of Danny Rivers, Sr., Antonio Fernandez, and Misty Ross-Finley, and their importance to my habeas corpus adjudication.

Affiant further sayeth not.

SWORN DECLARATION OF  
DANNY RICHARD RIVERS, JR.

I, Danny Richard Rivers, Jr., D.O.B. 04-13-1981, being of sound mind, do swear the afore-mentioned [sic] affidavit and all attachments to be true and

correct to the best of my knowledge and I hereby verify that the matters alleged therein are true and correct, I certify the above under penalty of perjury according to title § 1746, on this day, Feb. 03, 2020. My TDCJ# 01775951 at the McConnell Unit, 3001 South Emily Dr. Beeville, TX. 78102, Bee County, U.S.A. and pursuant to title 28 U.S.C. §1746 and TRAP 10.2 and Texas Civil Practices and Remedies Code §§ 132.001-132.003.

/s/ Danny Richard Rivers, Jr.  
Danny Richard Rivers, Jr.  
Affiant, [sic] TDCJ# 01775951  
McConnell Unit  
3001 South Emily Dr.  
Beeville, Tx. 78102  
Bee County, U.S.A.

#### CERTIFICATE OF SERVICE

This is to clarify that on Feb. 03, 2020, I, Danny Rivers, TDCJ# 01775951, did send this original document and its attached exhibits to Jennifer Rivers, 16361 FM 2208, Harleton, TX. 75651, in order for her to make copies and mail such copies to myself and the Court and the States Attorney.

/s/ Danny Richard Rivers, Jr.  
Danny Richard Rivers, Jr.

I, Jennifer Rivers, do certify that on the \_\_\_ day of Feb. 10th, 2020, I placed a true and correct copy of this document and its attachments in the U.S. Postal Service Mail with appropriate first class U.S. postage to the Clerk of the Court of the Fifth Circuit, and to the State's Attorney of the Texas Attorney Generals Office, Jennifer Wessinger.

/s/ Jennifer K. Rivers  
Jennifer Rivers

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

PETITION FOR A WRIT OF HABEAS CORPUS BY  
A PERSON IN STATE CUSTODY

DANNY RICHARD RIVERS

PETITIONER

(Full name of Petitioner)

vs.

BOBBY LUMPKINS, DIRECTOR TDCJ-ID

RESPONDENT

(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of Petitioner)

MCCONNELL UNIT – TDCJ-ID

CURRENT PLACE OF CONFINEMENT

#1775951

PRISONER ID NUMBER

7:21-cv-012-O

CASE NUMBER

(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memo-

randum. The petition, including attachments, may not exceed 20 pages.

3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.
5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction

is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).

8. Failure to notify the court of your change of address could result in the dismissal of your case.

### **PETITION**

**What are you challenging?** (Check all that apply)

- A judgment of conviction or sentence, probation or deferred-adjudication probation (Answer Questions 1-4, 5-12 & 20-25)
- A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- Other: \_\_\_\_\_ (Answer Questions 1-4, 10-11 & 20-25)

**All petitioners must answer questions 1-4:**

**Note:** In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or



that is under attack: The 30th Judicial District Court of Wichita County, Wichita Falls, Texas 900 7th Street, Wichita Falls, Texas 76301

2. Date of judgment of conviction: February 22, 2012
3. Length of sentence: 38 years
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: Cause No. 51, 391-A\*1-6

**Judgment of Convictions or Sentence, Probation or Deferred-Adjudication Probation:**

5. What was your plea? (Check one)  Not Guilty  
 Guilty  Nolo Contendere
6. Kind of trial: (Check one)  Jury  Judge Only
7. Did you testify at trial?  Yes  No
8. Did you appeal the judgment of conviction?  
 Yes  No
9. If you did appeal, in what appellate court did you file your direct appeal? 8th Court of Appeals El Paso, Texas Cause Number (if known): 08-12-00145-CR

What was the result of your direct appeal (affirmed, modified or reversed)? Affirmed

What was the date of that decision? July 23, 2014

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: Improper juror empaneled for my trial

Result: Refused

Date of result: January 14, 2015 Cause Number  
(if known): PD-1104-14

If you filed a petition for a *writ of certiorari* with  
the United States Supreme Court, answer the  
following:

Result: N/A

Date of result: N/A

10. Other than a direct appeal, have you  
filed any petitions, applications or motions  
from this judgment in any court, state or federal?  
This includes any state applications for a writ  
of habeas corpus that you may have filed.  
 Yes  No

11. If your answer to 10 is "Yes," give the following  
information:

Name of court: Texas Court of Criminal Appeals

Nature of proceeding: Writ of Habeas Corpus  
pursuant to Chapter 11.07 TCCP.

Cause number (if known): WR-84, 550-01& 02

Date (month, day and year) you filed the petition,  
application or motion as shown from the stamped  
date from the particular court: \_\_\_\_\_

Grounds raised: (Grounds 1&2) Ineffective asst. of  
Counsel; (Ground 3) Prejudicial biased jurist;  
(4) Prosec. Misconduct; (5) Unconst.application of  
statute; (6) improper grand jury

Date of final decision: 6-7-2017

What was the decision? denied in part/dismissed  
in part w/written order

Name of court that issued the final decision: Texas Court of Criminal Appeals

As to any second petition, application or motion, give the same information:

Name of court: Texas Court of Criminal Appeals

Nature of proceeding: Writ of Habeas Corpus pursuant to Chapter 11.07 TCCP

Cause number (if known): WR-84, 550-03

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: Submitted October 20, 2020 Stamp Filed October 30, 2020

Grounds raised: (1) No evidence to support element of Poss. C.P.; (2) New Scientific Evid. that undermines Child Porn Conv.; (3&4) IAC failing to raise exculp.evid.; (5) Double Jeopardy; (6) Jury Charge-non-unanimity; (7) New legal basis- Denial of Fund. Right to Unanimity; (8) IAC failure to object-unanimity; (9) Denial of Lesser Included Off.; (10) IAC-Lesser Inc. Off.; (11) IAC-Cause; (12) Cumulative Error; (13) IAC-Appeal; (14) Pros. Misconduct

Date of final decision: Pending

What was the decision? Pending

Name of court that issued the final decision: Pending

*If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.*

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition?  Yes  No
- (a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: N/A
- (b) Give the date and length of the sentence to be served in the future: N/A
- (c) Have you filed, or do you intend to file, any petition attacking the judgment of the sentence you must serve in the future?  Yes  No

**Parole Revocation:**

13. Date and location of your parole revocation: N/A
14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation?  Yes  No
- If your answer is "Yes," complete Question 11 above regarding your parole revocation.

**Disciplinary Proceedings:**

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?  Yes  No
16. Are you eligible for release on mandatory supervision?  Yes  No
17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:

\_\_\_\_\_

Disciplinary case number: \_\_\_\_\_

What was the nature of the disciplinary charge against you? \_\_\_\_\_

18. Date you were found guilty of the disciplinary violation: \_\_\_\_\_

Did you lose previously earned good-time days?  
 Yes  No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:  
\_\_\_\_\_

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?  Yes  No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: \_\_\_\_\_

Date of Result: \_\_\_\_\_

Step 2 Result: \_\_\_\_\_

Date of Result: \_\_\_\_\_

**All petitioners must answer the remaining questions:**

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages

stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE:** My convictions for Possession of Child Pornography are a result of a Due Process violation in that no evidence was presented to the jury to rely upon for the element of “knowingly or intentionally possessed, or intentionally accessed with intent to view” contained in Texas Penal Code 43.26(a)(1). The Due process violation resulted in a guilty verdict when I can demonstrate actual innocence.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The record reflects that I was out of town and therefore had no access to the computer when the alleged child pornography was created/accessed. The record reflects that 5 other people had access to the computer which was confiscated from my home while I was out of town. While said computer was confiscated from my home, the state presented no evidence that I had knowledge of the alleged child pornography or that the alleged child pornography had ever been viewed, much less viewed by me. I provide two affidavits, one from trial alibi witness Antonio Fernandez who states that he was ill prepared by counsel and rushed to

the stand, and one additional corroborating alibi witness who did not testify at trial.

- B. **GROUND TWO:** Age assessment expert opinion used to prove the element of Texas Penal Ccde 43.26(a) (10); Namely, “visual material depicting a child under the age of 18” was barred by the rules of evidence and recent studies show this opinion to be wholly unreliable, thus the state did not prove this element beyond a reasonable doubt, violating my 14th amend. right to due process under IN RE WINSHIP.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The state relied upon Emergency Room Tech, Dr. Scott Meyers, visual age assessment that the post-pubescent subjects contained in the alleged child pornography (1 image, 1 video) where [sic] under the age of 18. New scientific studies conducted using pediatricians, pediatric endocrinologists, and gynecologists have confirmed that visual age assessment of post-pubescent subjects in cases of alleged child pornograhly is wholly unreliable, dangerous, and unjust. Furthermore, Dr. Meyers testified for the state in order to prove the contents of the image and video without showing the video when he testified in violation of the rules of evidence. Dr. Meyers could not accurately describe the image or video when asked to. The video and image was readily available to the state, however, they did not enter it into evidence or display it for the court/jury during Meyers’ testimony.

- C. **GROUND THREE:** Defense counsel was ineffective for failing to raise exculpatory evidence at

pre-trial Severance Hearing resulting in a denial of severance of purely prejudicial material, thus violating my 6th and 14th amend. Rights to effective assistance of counsel and due process of law.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I recently obtained my attorney-client file (through a state bar grievance adjudication) that was unavailable to me at the time I filed my original habeas corpus application. The file contained an investigative report by the State's lead investigator and a summary of the State's Computer Forensic Lab investigation, both of which deem the image and video (alleged Child Porn) I was charged and convicted of as being 'NOT CHILD PORN' (Their emphasis). Defense Counsel's position at severance in part was that the child pornography counts should be tried separate in order to first assure that I was actually guilty of such before entering such into a trial for child sexual abuse. Counsel did not raise the exculpatory evidence in their possession to support their position.

- D. **GROUND FOUR:** Defense counsel was constitutionally ineffective by failing to present exculpatory evidence in their possession at trial that demonstrated factual innocence which violated my 6th and 14th amendment rights to effective assistance of counsel and due process of law.

Supporting facts (do not argue or cite law. Just state the specific facts that support your claim.):

I recently obtained my attorney-client file (through a state bar grievance adjudication) that



was unavailable to me at the time I filed my original habeas corpus application. The File contained an investigative report by the State's lead investigator and a summary of the State's Computer Forensic lab investigation, both of which deem the image and video (alleged Child Porn) I was charge and convicted of as being 'NOT CHILD PORN' (Their emphasis). Defense counsel did not raise this exculpatory evidence at trial. Trial counsel did not raise the question of the exculpatory report when questioning the State's lead investigator, nor did they raise the exculpatory forensic report when questioning the Computer Forensic Expert. \*(see additional grounds, pgs. 7(B)-7(E))\*

21. Relief sought in this petition: I am seeking an acquittal on the two counts of Possession of Child Pornography charges (counts 5&6) as well as an acquittal for Indecency w/child by Exposure (count 4) and a reverse and remand for new trial on counts 1-3. In the alternative I request a new trial for all six counts and/or any other relief this court deems adequate to adjudicate this Petition for writ of habeas corpus. Furthermore, I request an acquittal on all counts if this court finds that the State Prosecution knowingly fabricated and/or knowingly presented false evidence in order to obtain the conviction.

E. GROUND 5: My conviction for Indecency with a Child by Exposure was obtained in violation of the 5th Amendment Double Jeopardy Clause whereas no incident of exposure was testified to that was not contained within or subsumed by a greater offense of Indecency with a Child by Sexual Contact/Continuous Sexual Abuse.

SUPPORTING FACTS: No discrete act of Indecency with a Child by Exposure was ever presented to the jury by way of evidence for them to use for consideration for conviction on count 4. The only acts of exposure alluded to at trial were contained within the same course of conduct of, and subsumed by, a greater offense of Indecency with a Child by Sexual Contact. Count 1 for Continuous Sexual Abuse covers an ongoing episode of sexual abuse to include the underlying act of Indecency with a Child by Sexual Contact and bars additional prosecution for any of the underlying acts of sexual abuse. Indecency with a child by exposure is a lesser included offense of Indecency with a child by sexual contact which is covered by the conviction in count 1 (as well as count 2 for Indecency w/child by Sexual Contact).

- F. GROUND 6: Charge of the Court creates a non-unanimous verdict in violation of 5th and 14th Amendment due process rights.

SUPPORTING FACTS: The Charge of the Court was unavailable to me despite reasonable diligence on my behalf when I filed my original habeas corpus application. Multiple offenses were testified to at trial that meet the charged offenses in counts 2–4 and the jury was not instructed to be unanimous as to any specific act creating a non-unanimous verdict on those counts. Furthermore, two victims were alleged in the indictment in count 1. The court's charge is ambiguous in relation to the alleged victims and the jury was instructed orally that it need not be unanimous as to who was a victim, creating a non-unanimous verdict on count 1.

G. GROUND 7: According to recent ruling in Ramos v Louisian, [sic] the application of Texas Penal Code §21.02 in my case violates my 6th Amendment right to a unanimous verdict.

SUPPORTING FACTS: Ramos v Louisiana established a clear right to jury unanimity, not as a due process right, but as a fundamental right guaranteed by the 6th Amendment, overturning Apodaca.

The State alleged two victims in the indictment for count 1 but instructed the jury that they need not unanimously agree on who was a victim. Texas Penal Code §21.02 allows the State to bring multiple counts of 21.02 if it believes it can prove 2 acts of sexual abuse on multiple victims. However, the State can bring two victims in one count as the State did in my case. By instructing the jury that unanimity was not necessary as to the victims, the state violated my fundamental right to a unanimous verdict under Ramos.

H. GROUND 8: Trial counsel was ineffective for failing to object to the Charge of the Court which resulted in a non-unanimous jury verdict in violation of 6th and 14th amendment.

SUPPORTING FACTS: There was no specific unanimity instruction given in the Court's Charge. No specific incident was given to the jury for consideration on any count. No distinction was made between charged offenses and admissible-but-not-charged offenses. No instruction was given as to unanimity on the alleged victims in count 1 in the court's charge. At the charge conference, defense counsel stated "I don't have any objection to any part of the Charge" and "we

have no additions or corrections.” (See: RR vol 10, p 86)

- I. GROUND 9: I was denied lesser included offenses at trial in violation of Due Process under the 14th Amendment.

SUPPORTING FACTS: The Judge and Prosecutor erroneously orally instructed the jury to disregard the lesser included offense portion of the Court’s Charge. Upon review of the Court’s Charge that was previously unavailable to me when I filed my original habeas application, I became aware that the lesser included offense instructions in the Charge were proper and lawful and should not have been disregarded for the reasons given by the Judge and Prosecutor. The jury was orally instructed that if they found guilt on the lesser included offenses that that meant I was guilty of the greater offense in count 1, however, the instructions in the lesser included offense section of the Charge do not meet the statutory requirements necessary for a conviction on the greater offense in count 1. The Judge and Prosecutor misstated the law and as a result I was denied consideration of the lesser included offenses. The jury assessed near bare minimum sentencing on all counts charged and thus there exists a high probability they would have considered the lesser included had they not been erroneously instructed.

- J. GROUND 10: Trial counsel was ineffective for failing to object to the Judge and Prosecutor’s erroneous instructions to the jury to disregard the lesser included offense section of the Charge of the Court in violation of the 6th and 14th Amendment.

SUPPORTING FACTS: When the Judge and Prosecutor erroneously orally instructed the jury to disregard the lesser included offense portion of the Court's Charge, defense counsel failed to object, resulting in a denial of lesser included offenses. The jury instructions in the Charge of the Court, agreed upon by all parties, were proper and the oral instructions were a misstatement of law and had counsel objected, the objection would have been sustained.

- K. GROUND 11: Trial and Appellate counsel's constitutionally ineffectiveness "caused" my inability to raise nine grounds of error (2,3,4,6,8,9,10,13, and 14 of this application) and I was "prejudiced" by not having those grounds for relief adjudicated on my original appeal and thus should be excused from procedural bar.

SUPPORTING FACTS: Trial and appellate counsel refused to supply me with requested appellate records and attorney-client files which contained the factual basis of grounds 2-4 and 6-14 of my 11.07 application and the instant 2254 petition. I inquired into the matters of unanimity and lesser included offenses with appellate counsel but was persuaded by counsel that they were not meritorious grounds. Trial counsel did not raise the exculpatory evidence I recently located in the attorney-client file, did not object to the lack of unanimity instructions in the Charge of the Court, and did not object to the erroneous lesser included offense instructions, thus failing to preserve any of these issues on the record that was available to me for appeal.

- L. GROUND 12: Cumulative error resulting in a violation of Due Process of the 14th Amendment.

SUPPORTING FACTS: (1) Prosecution presented false evidence to the grand jury by way of a fraudulent affidavit, (2) Prosecutors misrepresented evidence as “child pornography” despite their knowledge of exculpatory reports from investigators stating that the image and video charged were in fact “NOT CHILD PORN” (their emphasis), (3) Prosecutors injected evidence into the record not supported by testimony, (4) misstatement of law by prosecutor led to a denial of lesser included offenses, (5) trial counsel failed to raise exculpatory evidence, (6) IAC for failing to request directive verdict when the state failed to offer evidence to support “knowingly or intentionally possessed or accessed with intent to view” the alleged child pornography, (7) IAC for failing to adequately prepare alibi witness, (8) IAC for failing to call proposed corroborating alibi witness, (9) IAC for failing to call proposed defense witness Misty Ross-Finley, (10) IAC for failing to support objection with rule of law in relation to expert testimony, (11) IAC failed to object to lack of unanimity instructions, (12) IAC for failing to object to Judge and Prosecutors erroneous instructions to disregard the lesser included offenses, (13) IAC for failing to object to prosecutor injecting evidence into the record not supported by testimony.

- M. GROUND 13: I was denied effective assistance of counsel on appeal in violation of 6th and 14th Amendment to effective assistance of counsel and Deu [sic] Process.

SUPPORTING FACTS: Appellate counsel was ineffective in failing to raise the issues brought forth in grounds 1–6, 8–10, and 14 (see and adopt

grounds 1–6, 8–10, and 14 and all supporting facts as if originally appearing here in their entirety). Despite my inquiries into much more meritorious grounds, the existence of exculpatory evidence not raise [sic] at trial, Double jeopardy violation on count 4, lack of unanimity, improper denial of lesser included offenses, and the states failure to prove the necessary elements of Possession of Child Pornography, and the existence of new studies demonstrating that expert testimony of Dr. Meyers was wholly unreliable, appellate counsel chose to raise only one previously adjudicated and denied juror misconduct error.

- N. GROUND 14: The Prosecutors committed misconduct violating my 5th, 6th, and 14th Amendment rights to a fair trial and Due Process of Law.

SUPPORTING FACTS: Prosecutors: (1) presented a fraudulent affidavit of an unknown individual to the grand jury to obtain the indictment, (2) injected evidence at closing arguments to support each charge that was not supported by the record, (3) misstated the applicable law to the jury when instructing them to disregard the lesser included offenses, and (4) falsely pursued child pornography charges in order to bolster their case when they had knowledge that I did not have access to the computer at the time of the created/access dates and their own investigators found the image and video to be “NOT CHILD PORN”.

22. Have you previously filed a federal habeus petition attacking the same conviction parole, revocation or disciplinary proceeding that you are attacking in this petition?  Yes  No

If your answer is “Yes,” give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

Filed original petition in the Northern District Court on August 30, 2017 and amended petition March 19, 2018. The petition was denied.

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)?  Yes  No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?  Yes  No

If your answer is “Yes,” state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

N/A  
\_\_\_\_\_  
\_\_\_\_\_

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging?  Yes  No



If “Yes,” identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed. Federal habeas petition denied by District Court but on appeal in the 5th Circuit—briefed and pending decision – (original pet. filed Aug. 30, 2017 – Amend. Pet. filed March 19, 2018). Also 11.07 application pending in TOCA filed Oct. 20, 1019 (WR-84, 550-03)

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:
- (a) At preliminary hearing: Attorney Rick Mahler
  - (b) At arraignment and plea: Attorney Rick Mahler
  - (c) At trial: Attorneys Rick Mahler, Frank Trotter, and Mark Barber
  - (d) At sentencing: Rick Mahler, Frank Trotter, Mark Barber
  - (e) On appeal: Mark Barber, eventually replaced by Dustin Nimz
  - (f) In any post-conviction proceeding: N/A
  - (g) On appeal from any ruling against you in a post-conviction proceeding: N/A

**Timeliness of Petition:**

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year

statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.<sup>1</sup>

Grounds 2–4, 6, and 8–14 all derive from a factual predicate previously unavailable to me when I filed my original petition and was discovered through diligence on Oct. 25, 2019. I filed an 11.07 application on Oct. 20, 2020 on these grounds in state court and thus have 5 days remaining on my one year deadline and this §2244(d) should not bar

---

<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

my petition. Grounds 1 and 5 pertain to constitutional violations that led to convictions of which I am actually innocent and this a fundamental miscarriage of justice exception to the AEDPA should apply, overcoming the procedural bar. Ground 7 is fundamental right newly recognized by the Supreme Court, in RAMOS V LOUISIANA (i.e. the right to a unanimous verdict in state trials). As to it's retroactivity, Justice Gorsuch opined: "Whether the right to unanimity applies to cases on collateral review is a question for a future case where the parties will have a chance to brief the issue and we will benefit it from their adversarial presentations.", thus §2244(d) should not bar this petition on ground 7.

Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on January 18, 2021 (month, day, year).

Executed (signed) on January 18, 2021 (date).

/s/ Danny Richard Rivers

Signature of Petitioner (required)

Petitioner's current address: McConnell Unit, 3001 S. Emily Dr., Beeville, Tx. 78102. (TDCJ-ID# 1775951)

I further declare that this Petition for Writ of Habeas Corpus was mailed by me, the petitioner, along with the accompanying Motion to Stay the Proceeding, to Jennifer Rivers in order that she can make the necessary copies and then forward the documents along with the appropriate filing fee to the Northern District Court-Wichita Falls Division.

Executed (signed) on January 18, 2021 (date).

/s/ Danny Richard Rivers  
Danny Richard Rivers, Jr.  
Petitioner-pro se

I, Jennifer Rivers, declare and verify that I mailed along with two copies, as well as the Motion to stay the Federal Northern District Court-Wichita Falls Division on this 8 day of February 2021, as well as the \$5 filing fee.

/s/ Jennifer Rivers  
Jennifer Rivers

Exhibit 1

Copy

Mr. Barber,

5-02-12

I'm getting concerned because you won't respond to my letters or answer my parents phone calls. I really would like to see what you decide to argue in my appeal.

BEFORE you file it. What grounds are you gonna raise?

Have you looked into the lesser included offense issue?

I still don't understand why the Judge told the jury they didn't have to consider them, was he right on that? I can't help but feel like that considering the time the jury gave me, if they could have, they probably would have considered the lesser offenses.

And do we bring up the juror issue again or is that too weak since we already got shot down on that?

Let me know something, man. I need some ~~communication~~ communication. Please contact my mom if you will. 940-631-7511, I talk to her regularly. Thanks.

Danny Rivers

Exhibit 6Copy

Mr. Nimz,

6-21-13

Can you send me records so I can have something to work with on my 11.07? (Transcripts, Clerks record, ect.) I am indigent and will have to do this stuff myself in like event that. The Direct Appeal and PDR are unsuccessful. I want to be prepared.

Respectfully,

Danny Rivers

\* The above is a copy of a carbon copy that will now most likely get copied and therefore I reproduce the above content as follows:

6-21-13

Mr. Nimz,

Can you send me records so I can have something to work with on my 11.07? (Transcripts, Clerks record, etc.) I am indigent and will have to do this stuff myself in the event that the Direct Appeal and PDR are unsuccessful. I want to be prepared.

Respectfully,  
Danny Rivers

COPY

EXHIBIT

as/19/13

Mr. Mahler,

I am currently trying to prepare for filing in 11:07 if my Direct Appeal is unsuccessful. I'm having a hard time getting my records. My understanding is that the contents of my attorney/Client file in your possession should be made available to me, I don't know what all it contains ~~with that~~ but it looks like I'm going to have to do the thing pro se so I need everything I can get. Please send me the Attorney/Client file ASAP. Thank you for your time.

Respectfully,

Danny Rivers

Danny Rivers # 1775951



06/04/15

Mr. Mahler,

I'm currently preparing a pro se writ of habeas corpus, and I'm having a difficult time obtaining records. Is there any help you can give me in this matter?

Also, can you send me my Attorney/Client files? I need them to assist me in preparing my grounds for my writ.

Thank you for your time and consideration on this matter. Please respond by letter or contact my mother at 940-631-~~XXXX~~.

Respectfully,



Darry Rivers # 01775451



COPY

6/20/15

Mr. Trotter,

I'm currently preparing an 11.07 writ of habeas corpus and I'm having a hard time gathering records. My appeal attorney Dustin Nime said he couldn't help me unless I paid for them and I can't do that. I requested attorney/client files from Rick Mahler but he never responded to my request.

Can you please help me out and send me all the records contained in my attorney/client file in your possession? Sorry for the inconvenience but I've been told that I'm supposed to have access to these files.

Thank you for your time and consideration.

Respectfully

Danny Rivers

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DISCRETIONARY·GRIEVANCE REFERRAL

STATE OF TEXAS

[LOGO]

Client·Attorney  
Assistance Program

Helpline: 800-932-1900  
CAAP@texasbar.com  
P.O. Box 12487  
Austin, TX 78711-2487  
Fax: 512-427-4442

October 18, 2019

Mr. Danny R. Rivers 1775951  
McConnell Unit  
3001 South Emily Drive  
Beeville, TX 78102

RE: Your Letter  
File: 825413

Dear Mr. Rivers:

Thank you for contacting the State Bar of Texas for help regarding your attorney. Mr. Mahler has since contacted our office and we are enclosing a copy of his response.

Because the Client-Attorney Assistance Program (CAAP) has successfully accomplished its goal through the Discretionary Grievance Referral Program, this letter serves to advise you that this matter will be returned to the Office of the Chief Disciplinary Counsel for final disposition.

The CAAP staff is pleased to have been able to assist you. Please take a few minutes to fill out the enclosed survey. Your response will be appreciated. If you have any questions, please feel free to contact me again at the address listed above.

Sincerely,

/s/ Dan T.

Dan T.

Program Associate

Client Attorney Assistance Program (CAAP)

State Bar of Texas

Enclosure

cc: Ricky L. Mahler

\*GRIEVANCE # 001905063

*I am a lawyer I am entrusted by the People of Texas  
to preserve and improve our legal system.  
I am licensed by the [illegible] Rules of  
Professional Conduct but I know that  
Professionalism requires more than merely  
avoiding the violation of laws and rules.  
I am committed to this Creed for no other  
reason than it is right.*

89

[LOGO]

RICK L. MAHLER  
ATTORNEY AT LAW

BOARD CERTIFIED - CRIMINAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

October 4, 2019

Julie Mahler  
Office Manager  
Legal Secretary

Jamie Arredondo  
Legal Assistant

Danny Rivers #1775951  
McConnell Unit  
3001 S. Emily Dr.  
Beeville, Texas 78102

Dear Mr. Rivers,

Enclosed please find your copies of your file that you had requested, along with an invoice of \$1,500.00 for copies that were made.

Thank you for your kind attention to this matter.

Sincerely,

/s/ Jamie Arredondo  
Jamie Arredondo  
Legal Assistant

Enclosures: As stated

900 Eighth Street, Suite 425 (Hamilton Building)  
Wichita Falls, Texas 76301  
Phone: (940) 723-9999 Fax: (940) 723-9998  
Email: rick@rickmahler.com

Exhibit 15

\* \* \*

something, until he could still come up there and see them. She indicated she was to meet with her attorney, LeeAnn Haines about an affidavit of extraordinary relief or something, and indicated she would go up there before closing today saying that she was in Oklahoma City picking up her sister from the airport and had the girls with her. I told her as far as a restraining order she would need to contact her attorney. I asked her when it was she actually moved out of the residence and she indicated they separated on March 28, 2008

And she moved out for good on April 30, 2008, when it was ordered by the court. She advised that prior to that she would go over there and stay off and on. I advised her that Pseudo B indicated things started happening to her after she moved out, but we were unsure if she meant April of 2009 or 2008, so that is cleared up there. I asked Christi if she had asked Pseudo-A about any other sexual activities and she advised she had, Pseudo-A advised that nothing has happened other than holding hands and a kiss with any other person. Asked her about Pseudo-A's menstruation issue and Christi advised that she's started it this date before they left for Oklahoma City. Christi advised they also did an over-the-counter pregnancy test two days ago and it showed it was fine. I asked Christi if Pseudo-A has ever mentioned if Danny has ever taken any pictures of her without clothes on, and Christi stated she did not. Christi advised she could put Pseudo- on the phone and I could ask her, and she did. I asked Pseudo-A if Danny had ever taken any pics of her without her clothes on, she stated not that she knows of but he has walked into

the bathroom while she was showering. I asked her if he's ever put his mouth anywhere on her body, other than her lips, she advised on her chest maybe twice. I asked her if he had ever taken a photo of them kissing on the lips and she advised no she had never kissed him on the lips... I advised her we had found a photo of him kissing a girl that looked like her, the girls in the photo had her hair pulled back similar to how she had hers pulled back a few nights ago. Pseudo-A thought it might be her mom instead of her. The call was ended, it was 8 minutes and 23 seconds in length:

On 11-17-09, I used image scan 3.02 program disk to retrieve video files from the Dell laptop that would constitute evidence in this case, and that they were files depicting adults engaging in sexual acts, The victims had advised that Danny River was showing them pornography on the computer and he would engage in sexual acts with them and/or in their presence. I place these files on to a CD – marked files found with image scan 3/02 (adult porn).

I located the following video files:

- 1) Location and title of video: documents and settings/christirivers/mydocuments/Limewire/save/reallyunderagekiddieporn/monicabellucc inude.mov Time October 26, 2009 00:09 this file, although the title indicated it to be child porn is not child porn. It depicts a female both clothed and with her breast exposed and the female is obviously an adult.
- 2) Location and title of video: documents and settings/christirivers/mydocuments/Limewire incomplete... NOT CHILD BORN [sic]
- 3) The location and title of file; documents and settings/christirivers/mydocuments/Limewire/

save//save/twelve yr old fucking her friend—  
lolita kiddie pre-teen pre-teen tiny children  
drunk whore slut stripper ass incest sex porn  
underage, IS NOT CHILD PORN

- 4) This is adult porn
- 5) Two females and a male adult
- 6) Adult female and adult male
- 7) Male and female adults
- 8) Appears 18-year old female exposing herself.
- 9) This appears to be the video we saw, not porn
- 10) Adult male and female
- 11) Not child porn. Adult intercourse.
- 12) Girls gone wild picture of butts.
- 13) Adult male and female
- 14) Adult male and female

On 11-17-09, I unsealed property tag# 261614- 3 DVD movies 1) "Teen Dreams Vol#9 Contract Girls"—adults engaging in sexual acts. 2) the accidental starlet-adults engaging in sexual acts.

Titled Hot Sauce – adults engaging in sexual acts.

On 11-17-09, I was advised that an order was signed by Judge Mark Price, regarding Danny Rivers, to prevent his access to Pseudo-B.

On 11-18-09, I made contact with ADA Tony Fidelie about a possible seizure proceeding on items of personal property on the specific property at 4 Buttercup Circle and he advised that the payoff amount for the property needed to be obtained. Information showed that the original loan was through First Bank in the amount of \$120,250. While



reviewing the interviews of Christi Rivers, she indicated the loan was currently with Wells Fargo Bank.

On 11-19-09, I made contact with the Wells Fargo bank, and was advised that their property at 4 Buttercup Circle is under foreclosure proceedings at this time, and I was referred to the law firm of Barrett, Daffin and Frappie for further information regarding the payoff for the property. I contacted the firm at 972-386-5040 and advised of my reason for calling, and requested information regarding the current payoff for the property in question. The person I spoke with advised he would do some checking and get back with me. I was later told the loan has been open four years, which I already had noticed from the appraisal district website. I was advised to subpoena further information from Wells Fargo Mortgage Services if additional information is needed. It is believed that the amount owed on the residence property 4 Buttercup Circle is such a high amount, compared to its current-value, that asset forfeiture proceedings would not be a viable option.

On 11-15-09, I unsealed property tag #261619 in order to preview the items below. The evidence was resealed on 11-15-09 at 1600 hours.

One DVE Fujifilm disk had no markings, was a homemade video of cheerleading competition. 3 ½ inch floppy disk – appeared to be an empty disk.

CD rewrite Office Depot brand disk – contains photographic images taken with a Sony camera on various dates. Photographs are seen that included victims with Danny Rivers at and [sic] amusement park. Data indicates the photographs were created on

5/10/2008. I printed one photograph off to include with the case packet.

Memorex CD-R disk – contains 12 music tracks.

Maxell CD-R music disk – contains 3 MP3 music files.

On 11-19-09. I placed the DVD A Cinderella Story, taken for property item 261608 which is the laptop into an envelope to be returned to the property room as its own piece of property.

\* \* \*

forensic examination and a report of the examination dated April 13, 2010 which were completed by forensic examiner Timothy Fox. The evidence items were transported back to the W.F.P.D. evidence room. The Dell computer was turned to the property room and the forensic report and CDs were retained by me for review.

The computer forensic reports indicated there was on [sic] image and 2 videos of interest located.

- 1) Documents and settings/ChristiRivers/mydocuments/Limewire/save/daughter and my little friend cooperating preteen girl fucked by man on bed. Created on 10-13-09 at 12:30 p.m. Accessed 11-1-09 4:41:22 p.m. Modified 10-13-09 at 12:44 p.m.
- 2) Documents and settings/christirivers/mydocuments/Limewire/save/young girl strips and fucks her boyfriend homemade porn teenager teen sex fucking.mpg
- 3) That is the underage picture of a girl – NOT CHILD PORN

\* \* \*

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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App. No. 18-11490

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DANNY RICHARD RIVERS,  
*Appellant Pro Se,*

vs.

BOBBY LUMPKIN, DIRECTOR, TEXAS  
DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONAL DIVISION,  
*Defendant-Appellee,*

---

MOTION

TO THE HONORABLE JUDGES OF THE FIFTH  
CIRCUIT:

COMES NOW, Danny Richard Rivers, Appellant, prose, who previously filed a motion with this court to stay proceedings pending the resolution of state habeas corpus. (See motion submitted Feb. 21, 2021 titled "MOTION FOR THE COURT TO CONSIDER A STAY PENDING RESOLUTION OF STATE HABEAS CORPUS"). Since that filing, the State has made their ruling on my state habeas corpus in which they dismissed by "post card" without prejudice and without written order, but citing TCCP 11.07-4(a-c) which is the section governing procedural bars of subsequent writs. The previously filed "stay" motion is now moot since I no longer have a pending state habeas action.

I now respectfully move this court to examine the following facts and circumstances and issue the appropriate relief on this matter. In support I provide the following:

1) On August 30, 2017 I filed my original 2254 petition for writ of habeas corpus in the Northern District Court of Texas (amended March 19, 2018). On September 17, 2018 the district court denied my petition and I filed for a certificate of appealability with this court on November 13, 2018. On October 25, 2019 I received my long requested but withheld attorney client file as a result of a State Bar Grievance adjudication (See State Bar Grievance #201905063) and began investigating the contents for possible appellate issues. On July 9, 2020 this court issued a COA and myself and the appellee-respondent have filed briefs and the case is still pending in this court.

Contained within the recently obtained attorney client file was two pieces of record that, despite reasonable diligence on my behalf, were not previously available to me when I filed my original state and federal habeas corpus petitions.

2) The first piece of previously unavailable record is an investigative report from the state's lead investigator, Detective Raymond Perry. This report contains exculpatory evidence which reveals that Detective Perry, a highly trained professional in child pornography investigations, had conducted an initial investigation on a laptop computer confiscated from my home and deemed the image and video was convicted of for possession of child pornography as "NOT CHILD PORN" (his emphasis).

Perry further supplemented his investigative report with a supplemental report after sending the laptop to North Texas Regional Computer Forensic Labr (NTRCFL) and receiving the results from that investigation. The supplemental report reveals that Sgt. Timothy Fox with NTRCFL indicated 2 videos and 1 image of interest in his report. However, he specifically labels the image (the one I was convicted of in count 6) as being “NOT CHILD PORN”. (his emphasis).

Despite this exculpatory evidence being in possession of my trial counsel, counsel failed to investigate and failed to raise the exculpatory evidence at two critical stages. First, Counsel filed a motion to sever the child pornography counts from the child sexual abuse counts in this case. Two hearings were held on the motion and counsel never raised the exculpatory evidence to support their position at severance and ultimately severance was denied.

Second, counsel failed to raise the exculpatory evidence at trial when cross-examining Detective Perry and Sgt. Fox. Furthermore, after becoming aware the two individuals responsible with investigating for alleged child pornography had deemed the image and video as “NOT CHILD PORN”, I have hired an expert to independantly review the material and the results are pending.

3) The second piece of previously unavailable record was a copy of the Charge of the Court. Despite multiple records request [sic] in the state court, the Charge of the Court was never provided to me for appellate purposes . . . I was provided my trial transcripts for review, however, the court reporter did not transcribe the Charge of the Court as the judge read it to the jury. The transcripts simply read

“the Judge reads the Charge of the Court to the jury.”  
(see: trial transcripts vol 11, p 9)

Upon review of the Court’s Charge it became apparent that my conviction was the result of a non-unanimous jury verdict whereas multiple acts were testified to at trial that meet each offense charged and the Court’s Charge lacked unanimity instructions. Unanimity was further compromised by the prosecutors oral instructions and closing arguments.

Further, the Court’s Charge revealed that the prosecution improperly orally instructed the jury to disregard the lesser included offense portion of the Court’s Charge. After reviewing the Court’s Charge I became aware that the lesser included offense portion was proper and that I was entitled to the lesser included instructions. The prosecutor misstated the applicable law when he instructed the jurors that the lessers were not relevant and should be disregarded.

Defense counsel failed to object to the lack of unanimity instructions in the Court’s Charge and failed to object when the jury was orally instructed to disregard the requested and agreed upon lesser included offenses.

4) As previously stated herein, my original habeas corpus action has been briefed in this court and a decision is pending. The new claims regarding the above mentioned ineffective assistance of counsel, as well as other constitutional violations that derive from the newly available facts, have been exhausted in the state and now have been filed with the Federal District Court for the Northern District - Wichita Falls Division. (See: Danny Richard Rivers v. Bobby Lumpkin, Director, TDCJ-CID - Civil Action No. 7:21-cv-00012-0-BP). A “show cause” order has been

issued by the district court to the Respondent. I've received no other or correspondences from the court of the Respondent as of the date of this filing.

5) The issues raised in the pending subsequent 22n4 petition would substantially effect this court's decision on the case before it. Contained in that petition are substantial IAC claims that this court should be aware of before determining if counsel was or was not ineffective in my case. Other grounds are raised under the miscarriage of justice exception whereas the petition demonstrates actual innocence on multiple counts of the conviction.

6) I have reviewed the Federal Rules of Appellate Procedures and Federal Rules of Civil Procedures, and yet, must admit, I am not clear what the proper procedure is in this situation. After becoming aware of the new grounds for relief, I ultimately filed the subsequent 11.07 application in order to (1) exhaust state remedies and (2) avoid offending A.E.D.P.A. restrictions and other procedural bars.

Now, my original habeas action still sits before this court, and a second action, over the same conviction, now sits before the federal district court. It seems to me that multiple courts are entertaining jurisdiction over the same conviction. Since my original habeas action is still pending, I request that this case be decided in light of ALL GROUNDS, i.e., those on appeal in this court AND those currently raised in the district court.

It seems that justice and judicial economy would best be served by this court's ONE TIME review of all my claims rather than revisiting this case in piecemeal litigation and I therefore seek intervention of this court to resolve this matter.

CONCLUSION

I felt it prudent to make this court aware of the previously unavailable claims I have currently exhausted in the state court and are now pursuing in the Federal District Court. I ask this court to liberally construe this motion in light of HAINES V KERNER, 404 U.S. 519, 521(1972) I pray this court will consider the fore- going information and either (1) issue a stay of these proceedings so that I may exhaust the new claims and then join the causes; (2) remand this case back to the district court for consideration of the new grounds; or (3) issue the appropriate remedy this court sees fit in light of the circumstances provided herein to protect my due process rights and so that the interest of justice may be served in this case.

Respectfully submitted on 4th day of April, 2021.

/s/ Danny Richard Rivers  
Danny Richard Rivers  
PRO SE REPRESENTATION  
TDCJ# 01775951  
McConnell Unit  
3001 South Emily Dr.  
Beeville, Tx. 78102

CERTIFICATE OF SERVICE

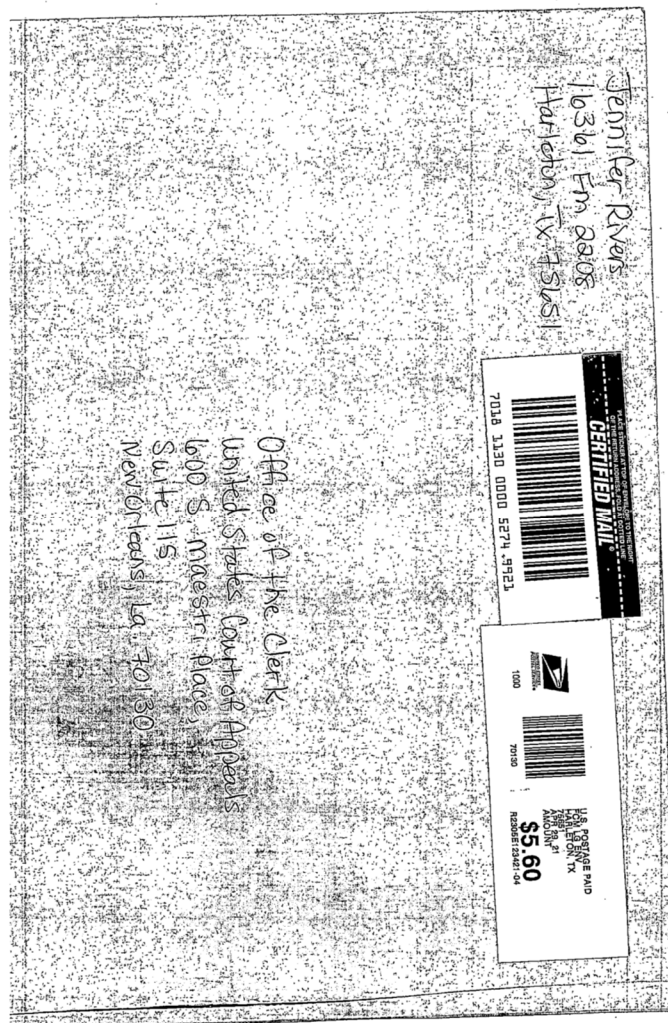
I certify that this original motion was sent by me to my stepmother Jennifer Rivers by way of TDCJ provided mailing system with proper first class postage in order for her to make copies for the Respondent for the State and for the 5th Circuit Court of Appeals on this 4th day of April, 2021.

/s/ Danny Richard Rivers  
Danny Richard Rivers



I, Terri M. Allums, so certify that I have made true copies. of this original motion and mailed one copy to Assistant Attorney General, Jennifer Wissinger at P.O Box 12548, Austin, Texas, 78711-2548; and 4 copies to the United States Court of Appeals for the 5th Circuit on this 29th day of April, 2021.

/s/ Terri M. Allums



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

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Civil Action No. 7:21-cv-00012-0-BP

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DANNY RICHARD RIVERS,  
*Petitioner,*

v.

BOBBY LUMPKIN, DIRECTOR, TDCJ-CID,  
*Respondent,*

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MOTION TO STAY THE PROCEEDINGS

To the Honorable Judges of the above stated court:

I, Danny Richard Rivers, Petitioner/Movant, pro se, respectfully move this court to stay the proceedings in the above mentioned cause for the following reasons:

The following facts and arguments will demonstrate that (1) the current §2254 petition pending in this court should be considered/construed as an amendment to my initial §2254 habeas petition and not as a successive petition, and (2) the Fifth Circuit Court of Appeals currently has jurisdiction over my initial habeas petition and I have motioned that court to remand the initial cause (Civil Action No. 7:17-cv-00124-0-BP, Appeal No, 18-11490) to district court for considerations of the previously unavailable claims in conjunction with the initial ones still pending on appeal.

FACTS

1.) On August 30, 2017 I filed my initial §2254 petition for writ of habeas corpus with this court (Amended March 19, 2018). The petition was denied by the Northern District [sic] Court on Sept. 17, 2018 and after filing a notice of appeal, I motioned the Fifth Circuit for a Certificate of Appealability (COA) on Nov. 28, 2018.

2.) On October 25, 2019, while my request for COA was pending, as a result of a State Bar Grievance adjudication (See: State Bar Grievance No. 201905063) I received my long requested-but-denied attorney client file of which contained exculpatory and investigative reports and other significant records that were unavailable to me when I submitted my initial petition.

3.) After developing the new claims and exhausting my remedies in the state court, I brought the newly available claims to this court in a subsequent §2254 petition on January 18, 2021. A “show cause” order was issued to the respondent. At this time I filed a motion with the Fifth Circuit (filed on May 03, 2021 under appeal no. 18-11490) requesting the appellate court to review the circumstances and either (1) issue a stay of the proceedings so that I may exhaust the new claims and then join the causes; (2) remand this case back to the district [sic] court for consideration of the new grounds; or (3) issue the appropriate remedy the court sees fit to protect my due process and so that the interest of justice can be served in this case. (page 6 of “Motion”).

4.) On May 5, 2021 the respondent filed an Answer to my petition and show cause order arguing that the petition should be dismissed as successive

under 2244(b) or otherwise transferred to the Fifth Circuit Court of Appeals for authorization. On August 11, 2021, with my Fifth Circuit motion still pending, Magistrate Hal R. Ray, Jr. concluded that my new petition “appears” to be successive and recommended the cause to be transferred to the court of appeals for authorization. I have filed objections on the same day I have filed this motion to stay.

5.) In light of the above mentioned facts and upon evaluation of the following supporting case law, I move this court for a stay of the proceedings or to otherwise take the appropriate action in light of the circumstances.

#### ARGUMENT

The Second Circuit Court of Appeals held in LITTLEJOHN V ARTUZ, 271 f3d 360, at 363 (2nd Cir. 2001) that their understanding of the AEDPA ensures “every prisoner one full opportunity to seek collateral review. Part of that opportunity--part of every civil case--is an entitlement to add or drop issues while the litigation proceeds.” (quoting JOHNSON V UNITED STATES, 196 f3d 802, 805). The general concern that civil plaintiffs have an opportunity for a full adjudication of their claims is particularly heightened in the AEDPA context, where the gatekeeping provisions of the statute stringently limit a petitioner’s ability to raise further issues in a subsequent action. See: ADAMS V UNITED STATES, 155 f3d 582, 583 (2nd Cir. 1998).

The Second Circuit then decided CHANG V UNITED STATES, 298 f3d 174 (2002). In Chang, after the petitioner’s conviction and sentence were affirmed on direct appeal he filed a 28 U.S.C.S. §2255 motion. The motion was denied as untimely and

petitioner appealed. Before the appellate court had rendered a decision, the petitioner filed a habeas petition under 28 U.S.C.S. §2241. The district court determined that petitioner's § 2241 motion should be treated as a successive §2255 motion and transferred it to the appellate court for certification. The court of appeals held that the §2241 motion could be converted to a §2255, however, because the initial habeas petition was not complete, the district court erred in treating the later petition as a second or successive motion. On remand, the appellate court ordered the district court to consider whether the issue raised in the later petition, which was now labeled as a "motion to amend," related back to the claims raised in the original habeas petition.

The transferred motion for leave to file a second or successive habeas corpus was dismissed as unnecessary, and the matter was transferred back to the district court for proceedings consistent with the opinion.

The court went on to say that they had previously decided that the application of Fed.R.Civ.P. 15 to habeas petition... would not frustrate the AEDPA's goals, even if the motion to amend is brought late in the proceedings. See: LITTLEJOHN, 271 f3d at 361 (motion to amend brought three years after initial petition filed.); FAMA, 235 f3d at 815 (motion to amend brought more than a year after initial petition filed.)

The CHANG court stated that their ruling finds support in the Eighth Circuit decision in NIMS V AULT, 251 f3d 698 (8th Cir. 2001), which closely related to the circumstances of my case. In NIMS, a district court denied the petitioner's first §2254 habeas petition—challenging his conviction on inef-

fective assistance of counsel and Eighth Amendment grounds--on the merits in 1991. While an appeal of that denial was pending before the Eighth Circuit, counsel for the petitioner became aware of a potential juror misconduct claim. Counsel requested that the Eighth Circuit dismiss the appeal and remand the case to the district court so that the petition could be amended to raise the additional claim. On remand, the district court dismissed the amended petition for failure to exhaust state remedies with respect to the juror misconduct claim. (My case differentiates here where I have already exhausted my new claims in the state court). After the state court denied Nims's claim as untimely, he then again raised the juror misconduct claim in a habeas petition in 1998, after the AEDPA's effective date. The district court exercised jurisdiction over the petition, ultimately denying the requested relief because the petitioner failed to show "cause" for excusing the state procedural bar.

Rather than vacating the distric [sic] court's judgement [sic] on the ground that the petitioner failed to obtain authorization to file a second or successive habeas petition, however, the Eighth Circuit proceeded to consider whether the juror misconduct claim was procedurally defaulted. (NIMS at 702). In other words, the Eighth Circuit implicitly concluded that the amendment of the habeas petition on remand to include additional claims for relief does not qualify as an abuse of the writ, nor was it barred by the AEDPA's stricture against second or successive habeas petitions.

Just as Nims's counsel became aware of potential claims while Nims's petition was pending on appeal in the Eighth Circuit, I, too, became aware of potential claims while my petition is pending before

the Fifth Circuit. I have requested the Fifth Circuit to remand the case back to the district court but the motion is pending.

I aver that my subsequent §2254 habeas petition should be considered/construed as an amendment under Fed.R.Civ.P. 15. The amendment would be timely whereas under 15(c), an amendment is timely if it “relates back” to the original habeas petition. Fed.R.Civ.P. 15(c)(2)(“An amendment relates back to the original pleading when the claim or defense asserted in the amended pleading arose out of the conduct, or occurrence set forth or attempted to be set forth in the original pleading.”)

Furthermore, the courts have routinely construed pro se litigants post conviction motions who seek relief under the wrong provisions. Moreover, Rule 15 provides that “leave shall be freely given when justice so requires.”

#### CONCLUSION

In order to prevent unnecessary litigation and to preserve judicial resources, I move this court to stay this current proceeding (7:21-cv-00012-0-BP) until the Fifth Circuit decides whether or not it will remand my initial cause (7:17-cv-00124-0-BP) to the district court and allow me to amend my initial petition with the previously unavailable claims. In the alternative I move the court to consider an interlocutory review to determine the appropriate remedy to preserve justice in this case. I ask this court to liberally construe this motion in light of HAINES V KERNER, 404 U.S. 519 (1972).

CERTIFICATE OF SERVICE

I, Danny Richard Rivers, do hereby certify that I placed this document titled "Motion to Stay the Proceedings" addressed to the Northern District Court and a true copy of said document to the counsel for the Respondent, Jennifer Wissinger, in the TDCJ provided mailing system with appropriate pre-paid postage on this 29 day of August, 2021.

/s/ Danny Richard Rivers  
Danny Richard Rivers, pro se



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UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

Tel. 504-310-7700  
600 S. Maestri Place,  
Suite 115  
New Orleans, LA 70130

November 15, 2021

Ms. Karen S. Mitchell  
Northern District of Texas, Wichita Falls  
United States District Court  
1000 Lamar Street  
Room 203  
Wichita Falls, TX 76307-0000

No. 21-10967      In re: Danny Rivers  
USDC No. 7:21-CV-12

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the  
mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Melissa B. Courseault  
Melissa B. Courseault, Deputy Clerk  
504-310-7701

cc w/encl:

Mr. Danny Richard Rivers

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 21-10967

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IN RE: DANNY RICHARD RIVERS,  
*Movant.*

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AUTHORIZATION TO FILE  
SUCCESSIVE HABEAS CORPUS PETITION

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CLERK'S OFFICE:

Authorization to file a successive habeas corpus petition is dismissed for failure to comply with this Court's notice of September 24, 2021.

LYLE W. CAYCE, Clerk  
Clerk of the United States Court of  
Appeals for the Fifth Circuit

By: /s/ Melissa B. Courseault,  
Melissa B. Courseault Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

[SEAL]

A True Copy  
Certified Order issued Nov. 15, 2021

Lyle W. Cayce, Clerk  
Clerk, U.S. Court of Appeals  
for the Fifth Circuit

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UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

Tel. 504-310-7700  
600 S. Maestri Place,  
Suite 115  
New Orleans, LA 70130

July 26, 2024

Ms. Karen S. Mitchell  
Northern District of Texas, Wichita Falls  
United States District Court  
1000 Lamar Street  
Room 203  
Wichita Falls, TX 76307-0000

No. 24-10330

In re: Danny Rivers  
USDC No. 7:21-CV-12

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the  
mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Mary Frances Yeager

Mary Frances Yeager, Deputy Clerk  
504-310-7686

cc w/encl:

Mr. Danny Richard Rivers

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 24-10330

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IN RE: DANNY RICHARD RIVERS,  
*Movant.*

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AUTHORIZATION TO FILE  
SUCCESSIVE HABEAS CORPUS PETITION

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CLERK'S OFFICE:

Authorization to file a successive habeas corpus petition is dismissed for failure to comply with this Court's notice of April 15, 2024.

LYLE W. CAYCE, Clerk  
Clerk of the United States Court  
of Appeals for the Fifth Circuit

By: /s/ Mary Frances Yeager  
Mary Frances Yeager, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

[SEAL]

A True Copy  
Certified Order issued July 26, 2024

Lyle W. Cayce, Clerk  
Clerk, U.S. Court of Appeals  
for the Fifth Circuit