

NO. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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JOHN PHILLIP BENDER-PETITIONER

VS.

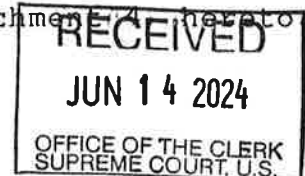
THE STATE OF TEXAS-RESPONDENT

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PETITIONER'S FIRST AMENDED MOTION FOR EXTENSION OF TIME TO  
FILE PETITION FOR WRIT OF CERTIORARI TO  
THE THIRD COURT OF APPEALS OF TEXAS AND  
TO THE 331ST JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

Petitioner, John Phillip Bender, asks for an extension of time to file his petition for writ of certiorari, of 60 days.

Review is sought for the February 10, 2023 judgment and opinion of the Third Court of Appeals of Texas, John Phillip Bender v. The State of Texas, Appeal No. 03-23-00019-CR, Attachment 1 hereto; and, the November 23, 2022 Order of the 331st Judicial District Court of Travis County, Texas, Case No. D-1-DC-08-904109, Attachment 2, hereto. Although a timely motion for rehearing en banc was filed in referenced Appeal No. 03-23-00019-CR, there is no order granting or denying the motion, which was never docketed to petitioner's knowledge. Accordingly, petitioner sought timely review by the bifurcated highest state courts for which a decision could be had. 28 USC §1257(a). Review was first sought in the Court of Criminal Appeals of Texas, John Phillip Bender, PD-0193-23, and discretionary review was refused June 21, 2023, and petitioner's motion for rehearing was denied August 23, 2023, Attachment 3, hereto. Review was next sought in the Supreme Court of Texas, In re Bender, Case No. 23-0752, and discretionary review was denied November 10, 2023, and petitioner's motion for rehearing was denied March 1, 2024. Attachment 4 hereto.



Timely discretionary review was sought and denied by the highest state court in which a decision could be had, and the last timely motion for rehearing was denied March 1, 2024, petition for writ of certiorari due 90 days thereafter, May 30, 2024, Rule 13.1, invoking jurisdiction under USC §1257(a). No separate orders were sent to me, the "white card" notices, Attachments 3 and 4, is all that was sent to me. An extension of 60 days is sought, from May 30, 2024 to July 29, 2024, in which to file my petition for writ of certiorari.

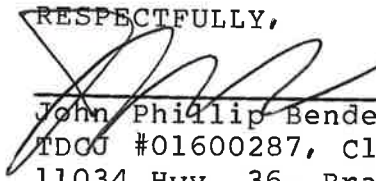
I have worked diligently to prepare my petition and will not be able to file without the 60 day extension. I have not completed hand writing the petition and I must type it, prepare authorities index, verify citations to cases and documents, prepare my appendix, and proof all documents before filing, so that it will be complete and correct. I will need the 60 day extension for this.

Also, time is needed to research specific more current Court decisions reaffirming existing federal double jeopardy law, i.e. McElrath v. Georgia, 144 S.Ct. 651 (2024); Evans v. Michigan, 568 U.S. 313 (2013). State courts of last resort have decided important questions of federal double jeopardy law in a manner that conflicts decisions of this Court and amounts to evasion thereof via clerical error. Although this is the fourth time the case is before the Court, what has changed is the 2023 Opinion, Bender v. State, 2023 Tex.App. LEXIS 881, at \*1 (Tex.App.-Austin Feb 10, 2023, pet. den'd). It judicially noticed the record truth of actual jury findings different from its 2011 Opinion, Bender v. State, 2011 Tex.App. LEXIS 3096, at \*1 (Tex.App.-Austin Apr 19, 2011, pet. den'd, cert. den'd).

The 2023 Opinion judicially noticed that its 2011 Opinion, second sentence, and the 2009 Judgments it AFFIRMED, misrecited jury final factual culpability determinations as named Tex.Pen.C. §§31.09, 32.03 continuing nature Offense Charged, exclusively, which never happened. The 2023 Opinion and the 2011 Opinion, first sentence, acknowledged judicially noticed actual historic record truth of jury's 2009 final factual culpability dterminations as unindicted named Tex.Pen.C. §§31.03, 32.45 discrete incident nature Offense Convited, different in kind and not discretely actionable units of prosecution of the Offense Charged. There is no jury finding establishing criminal culpability for §§31.09, 32.03 Offense Charged, which the jury in fact rejected by its 2009 verdicts, a nonculpability factual jury determination for §§31.09, 32.03, by operation of federal double jeopardy law. See McElrath, above.


Disregarding acknowledged judicially noticed material errors in the 2011 Opinion and 2009 Judgments AFFIRMED, both 2011 and 2023 Opinions are nonculpability legal determinations for §§31.09, 32.03, by operation of federal double jeopardy law, See Evans, above. The 2011 Opinion declined to determine sufficiency of the evidence therefor, i.e., no jury verdicts, addressing only §§31.03, 32.45 unindicted offenses and the 2023 Opinion is silent on the issue. Appeal arises from "now for then" clerical remedial proceedings initiated in 2002 and federal double jeopardy law controls.

RESPECTFULLY,

 5/31/24  
John Phillip Bender, petitioner  
TDCJ #01600287, Clemens TC#2,  
11034 Hwy. 36, Brazoria, TX 77422

PROOF OF SERVICE

I John Phillip Bender, Petitioner, certify that on the 31st day of May, 2024, a true and correct copy of petitioner's corrected application, Petitioner's First Amended Motion for Extension of Time to File Petition for Writ of Certiorari to the Third Court of Appeals of Texas and to the 331st Judicial Court of Travis County, Texas, with 4 attachments described in the motion attached, was served upon opposing counsel by mailing the same, first class mail, postage prepaid, by deposit in the Clemens TC#2 Unit system for prison legal mail, addressed to: The Honorable Jose Garza, District Attorney, Travis County, Texas, P.O. Box 1748, Austin, Texas 78767, for affixing indigent inmate mail postage, before mailing.

 5/31/24  
\_\_\_\_\_  
John Phillip Bender, petitioner  
TDCJ #01600287, Clemens TC#2  
11034 Hwy. 36, Brazoria, TX 77422

I, John Phillip Bender, certify under penalty of perjury that the foregoing motion, proof of service and attached documents are true and correct.

Executed on the 31st day May, 2024.

 5/31/24  
\_\_\_\_\_  
John Phillip Bender, petitioner,  
TDCJ #01600287

DOCUMENTS APPENDED TO AMENDED MOTION FOR EXTENSION OF TIME

Attachment 1: lower state intermediate appeals court judgment and opinion for which review is sought: This motion, p.6.

Texas Court of Appeals, Third District, at Austin, John Phillip Bender, Appellant v. The State of Texas, Appellee, Appeal No. 03-23-00019-CR, Judgment and Memorandum Opinion, rendered and entered February 10, 2023 [Bracketed notations of page break references to Bender v. State, 2023 Tex.App.Unpub. LEXIS, 881, at \*1-\*2 (Tex.App.-Austin Feb 10, 2023, pet. ref'd).]

Attachment 2: lower state district court order for which review is also sought: This motion, p.9.

331st Judicial District Court, Travis County, Texas, The State of Texas v. John Phillip Bender, Case No. D-1-DC-08-904109, in "now for then" proceeding initiated by petitioner November 7, 2022, Order, signed and entered November 23, 2022.

Attachment 3: bifurcated highest state court review sought of February 10, 2023 Judgment and Memorandum Opinion and November 23, 2022 Order, of the lower state intermediate and lower state district courts, respectively: This motion, p.10.

Supreme Court of Texas, In re Bender, Case No. 23-0752, "white card" notices that discretionary review was denied November 10, 2023 and that petitioner's motion for rehearing was denied March 1, 2024.

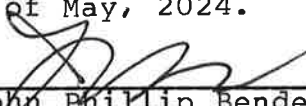
Attachment 4: bifurcated highest state court review sought of February 10, 2023 Judgment and Memorandum Opinion and November 23, 2022 Order, of the lower state intermediate and lower state district courts, respectively: This motion, p.11.

Court of Criminal Appeals of Texas, John Phillip Bender, PD-0193-23, "white card" notices that discretionary review was denied June 21, 2023 and that petitioner's motion for rehearing was denied August 23, 2023.

[Petitioner's last motion for rehearing was denied March 1, 2024.]

I, John Phillip Bender, certify under penalty of perjury that the foregoing is true and correct and the attached documents are true and correct copies of the originals.

Executed on the 31st day of May, 2024.

 5/31/24  
\_\_\_\_\_  
John Phillip Bender, petitioner  
TBCJ #01600287

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

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JUDGMENT RENDERED FEBRUARY 10, 2023

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NO. 03-23-00019-CR

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John Phillip Bender, Appellant

v.

The State of Texas, Appellee

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APPEAL FROM THE 331ST DISTRICT COURT OF TRAVIS COUNTY  
BEFORE JUSTICES BAKER, KELLY, AND SMITH  
DISMISSED FOR WANT OF JURISDICTION-- OPINION BY JUSTICE BAKER

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This is an appeal from the judgment of conviction entered by the trial court. Having reviewed the record, it appears that the Court lacks jurisdiction over this appeal. Therefore, the Court dismisses the appeal for want of jurisdiction. Because appellant is indigent and unable to pay costs, no adjudication of costs is made.

ATTACHMENT 1 (Page 2 of 3)

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

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NO. 03-23-00019-CR

NO. 03-23-00020-CR

---

John Phillip Bender, Appellant

v.

The State of Texas, Appellee

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[\*1] FROM THE 331ST DISTRICT COURT OF TRAVIS COUNTY  
NO. D-1-DC-08-904109, THE HONORABLE CHANTAL ELDRIDGE, JUDGE PRESIDING

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MEMORANDUM OPINION

In 2009, a jury found John Phillip Bender guilty of theft and misapplication of fiduciary property, and Bender was sentenced to twenty years' imprisonment for each count. *See* Tex. Penal Code §§ 12.32, 31.03, 32.45. This Court affirmed the judgments of conviction. *See Bender v. State*, No. 03-09-00652-CR, 2011 WL 1561994, at \*1, \*12 (Tex. App.—Austin Apr. 19, 2011, pet. ref'd) (mem. op., not designated for publication). In November 2022, Bender filed a pro se motion for judgments nunc pro tunc. *See Blanton v. State*, 369 S.W.3d 894, 897-98 (Tex. Crim. App. 2012) (explaining that purpose of nunc pro tunc judgment is to allow correction of clerical errors when there is discrepancy between judgment pronounced in court and judgment reflected in record). The trial court denied the motion, and Bender has filed a notice of appeal from the trial court's order.

In order for an appellate court to have jurisdiction over an appeal, the appeal must be authorized by law. See *Abbott v. State*, 271 S.W.3d 694, 696-97 (Tex. Crim. App. 2008). For criminal cases, an appeal is authorized only when a trial court “enters a judgment of guilt or other appealable order.” Tex. R. App P 25.2(a)(2); see Tex. Code Crim. Proc. art. 44.02. An order denying a judgment nunc pro tunc does not result in a new judgment, and no statute vests appellate courts with jurisdiction over an appeal from an order denying a request for a judgment nunc pro tunc. *Everett v. State*, 82 S.W.3d 735, 735 (Tex. App.—Waco 2002, pet. dism’d); see *Abbott*, 271 S.W.3d at 697; see also *Gomez v. State*, No. 03-20-00460-CR, 2020 WL 6018570, at \*1 (Tex. App.—Austin Oct. 6, 2020, no pet.) (mem. op., not designated for publication) (dismissing appeal of denial of motion for judgment nunc pro tunc); *McIntosh v. State*, 110 S.W.3d 51, 52 (Tex. App.—Waco 2002, order) (explaining that defendant has right to appeal from rulings other than final judgment of conviction “only when ‘expressly granted by law’” (quoting *Benford v. State*, 994 S.W.2d 404, 409 (Tex. App.—Waco 1999, no pet.))).

Accordingly, we dismiss these appeals for want of jurisdiction.

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Thomas J. Baker, Justice

Before Justices Baker, Kelly, and Smith

Dismissed for Want of Jurisdiction

Filed: February 10, 2023

Do Not Publish



Filed in the District Clerk  
Of Travis County, Texas  
At 11/23/2022 10:11AM CK  
Velva L. Price, District Clerk

**ATTACHMENT 2**

**NO. D-1-DC-08-904109**

**STATE OF TEXAS**

**V.**

**JOHN BENDER**

§  
§  
§  
§  
§

**IN THE 331st JUDICIAL**

**DISTRICT COURT OF**

**TRAVIS COUNTY, TEXAS**

**ORDER**

ON THIS 23 day of November, 2022, came on to be considered the applicant's Motion for Judgments Nunc Pro Tunc (Counts I & II) filed November 7, 2022. The Court orders that the motion is hereby **DENIED**.

The court hereby **ORDERS** that the District Clerk of Travis County send a copy of this order to the defendant and to counsel for the State.

DocuSigned by:  
Chantal Eldridge  
ABD778BF008441C  
Chantal Eldridge, JUDGE PRESIDING

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office  
On 12/22/2022 11:47:42



Velva L. Price  
VELVA L. PRICE  
DISTRICT CLERK

By Deputy: Angel Crope



OFFICIAL NOTICE FROM  
SUPREME COURT OF TEXAS  
Post Office Box 12248  
Austin, Texas 78711-2248

RE: Case No. 23-0752  
COA #: 03-23-00019-CR

STYLE: IN RE BENDER



US POSTAGE IMPITNEY BOWES



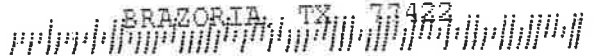
ZIP 78701 \$ 000.51<sup>0</sup>  
02 4W  
TC# 000036743 D-1-DC-08-904109

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

*S Darm - 64*

MAIL TO:

JOHN PHILLIP BENDER  
#01600287  
CLEMENS TC#2  
11034 HWY. 36  
BRAZORIA, TX 77422

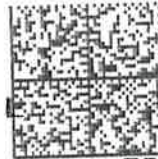


*VF DC 11-15-23*



OFFICIAL NOTICE FROM  
SUPREME COURT OF TEXAS  
Post Office Box 12248  
Austin, Texas 78711-2248

RE: Case No. 23-0752  
COA #: 03-23-00019-CR  
STYLE: IN RE BENDER



US POSTAGE IMPITNEY BOWES



ZIP 78701 \$ 000.53<sup>0</sup>  
02 4W  
DATE: 3/1/2024  
TC#: D-1-DC-08-904109

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced petition for writ of mandamus.

*S Darm 105*

MAIL TO:

JOHN PHILLIP BENDER  
#01600287  
CLEMENS TC#2  
11034 HWY. 36  
BRAZORIA, TX 77422

77422-839899



ATTACHMENT 4

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

STATE OF TEXAS  
PENALTY FOR  
PRIVATE USE

PRESORTED  
FIRST CLASS



U.S. POSTAGE

ZIP 78701 \$ 000.37<sup>0</sup>

6/21/2023

COA No. 03-23-00019-CR

BENDER, JOHN PHILLIP Tr. Ct. No. D-1-DC-08-904109

PD-0193-23

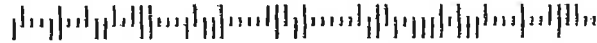
On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

*Sdown 64*

JOHN PHILLIP BENDER  
CLEMENS UNIT - TDC # 01600287  
11034 HIGHWAY 36  
BRAZORIA, TX 77422

EIZYAAB 77422



OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

STATE OF TEXAS  
PENALTY FOR  
PRIVATE USE

PRESORTED  
FIRST CLASS



U.S. POSTAGE PITNEY BOWES

ZIP 78701 \$ 000.37<sup>6</sup>

02 4W 0000376979 AUG 24 2023

8/23/2023

03-23-00019-CR

BENDER, JOHN PHILLIP Tr. Ct. No. D-1-DC-08-904109

PD-0193-23

On this day, the Appellant's Pro Se motion for rehearing has been denied.

Deana Williamson, Clerk

JOHN PHILLIP BENDER  
CLEMENS UNIT - TDC # 01600287  
11034 HIGHWAY 36  
BRAZORIA, TX 77422

*Sdown 64*

GIZTAAB 77422



John Phillip Bender  
TDCJ #01600287  
Clemens TC#2  
11034 Hwy. 36  
Brazoria, Texas 77422

May 31, 2024

Clerk,  
Supreme Court of the United States  
Washington, DC 20543-0001

Re: John Phillip Bender v. The State of Texas

TO THE HONORABLE CLERK OF THE SUPREME COURT OF THE UNITED STATES:

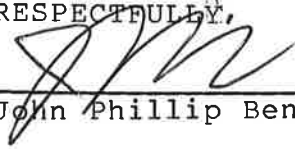
Enclosed are the original (one copy) of amended filings, in reply to your May 21, 2024 letter, affording opportunity to cure my May 7, 2024 filing received by you May 17, 2024, which I received today:

(1) Preceding the amended application is: Petitioner's Motion for leave to Proceed In Forma Pauperis, executed May 31, 2024, with my declaration in support and Proof of Service on opposing counsel; and, my Records Release Authorization of May 31, 2024 with a printout of my inmate trust fund account, TDCJ Records Officer certified, enclosed.

(2) Petitioner's First Amended Motion for Extension of Time to File Petition for Writ of Certiorari (60 days) from May 30, 2024 is sought, to July 29, 2024. Petitioner seeks review of Texas Court of Appeals, Third District, at Austin, Bender v. State, Appeal No. 03-23-00019-CR, February 10, 2023 Judgment and Opinion, and 331st Judicial District Court, Travis County, Texas, State v. Bender, Case No. D-1-DC-08-904109, November 23, 2022 Order denying petitioner's 2022 "now for then" relief sought, which 2023 Judgment and Opinion and 2022 Order are appended to the motion. Rule 13.5. Bifurcated highest state courts in which a decision can be had and review sought thereof, include: The Supreme Court of Texas, In re Bender, Case No. 23-0752, discretionary review denied November 10, 2023, rehearing denied March 1, 2024; The Court of Criminal Appeals of Texas, John Phillip Bender, Case No. PD-0193-23, discretionary review denied June 21, 2023, rehearing denied August 23, 2023. Neither bifurcated highest state court issued an opinion, petitioner notified by "white card" denials, which are also appended to the motion.

Since the last rehearing was denied by The Supreme Court of Texas on March 1, 2024, jurisdiction is invoked under 28 USC §1257(a), and, the Petition for Writ of Certiorari is due 90 days after that, May 30, 2024. Rule 13.1. A 60 day extension to July 29, 2024 is sought to file.

RESPECTFULLY,

 5/31/24  
\_\_\_\_\_  
John Phillip Bender, petitioner

FILE COPY

RE: Case No. 23-0752                      DATE: 11/10/2023  
COA #: 03-23-00019-CR                      TC#: D-1-DC-08-904109  
STYLE: IN RE BENDER

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

JOHN PHILLIP BENDER  
#01600287  
CLEMENS TC#2  
11034 HWY. 36  
BRAZORIA, TX 77422

**FILE COPY**

RE: Case No. 23-0752  
COA #: 03-23-00019-CR

DATE: 3/1/2024  
TC#: D-1-DC-08-904109

STYLE: IN RE BENDER

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced petition for writ of mandamus.

JOHN PHILLIP BENDER  
#01600287  
CLEMENS TC#2  
11034 HWY. 36  
BRAZORIA, TX 77422

**Additional material  
from this filing is  
available in the  
Clerk's Office.**