

FILED

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

MAY 19 2015

IN THE UNITED STATES DISTRICT COURT

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY LW DEPUTY

FOR THE WESTERN DISTRICT OF TEXAS

MIDLAND/ODESSA DIVISION

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

JARED MORRISON
PETITIONER
(Full name of Petitioner)

HUNTSVILLE UNIT, HUNTSVILLE, TEXAS
CURRENT PLACE OF CONFINEMENT

vs.

1747148
PRISONER ID NUMBER

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

MO 15CV-069
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 Do not cite legal authorities.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 memorandum. 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 ^{TWO COPIES} ~~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, (Answer Questions 1-4, 5-12 & 20-25)
probation or deferred-adjudication probation.
- 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 385th District Court out of Midland County Texas

2. Date of judgment of conviction: April 28, 2011

3. Length of sentence: 16 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: CR-29320

Judgment of Conviction 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? 11th Court of Appeals (Eastland, Texas)

Cause Number (if known): 11-11-00191-CR

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

What was the date of that decision? May 30, 2013

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

Grounds raised: The Court of Appeals erred by violating Texas Rules of Appellate Procedure Rule 47.1 by failing to address every issue raised.

Result: Refused

Date of result: October 23, 2013 Cause Number (if known): PD 0767-13

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: The 385th District Court out of Midland Texas. Sent to Texas Court of Criminal Appeals and filed with them on March 18, 2015.

Nature of proceeding: Application for Writ of Habeas Corpus/11.07

Cause number (if known): CR 29320-A (Trial Court NO.) 12/30/14
WR-83,021 (Writ NO. For Court of Criminal Appeals) 3/18/15

Date (month, day and year) you filed the petition, application or motion as shown by a file-

Grounds raised: Ineffective assistance of counsel; Separation of Powers violation;
Equal Protection violations; Due Process violations; Actual Innocence.

Date of final decision: April 29, 2015

What was the decision? Denied without written order on trial court's findings
without a hearing.

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: N/A

Nature of proceeding: N/A

Cause number (if known): N/A

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

N/A

Grounds raised: N/A

Date of final decision: N/A

What was the decision? N/A

Name of court that issued the final decision: N/A

*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: United States District Court for the Western District
of Texas Midland/Odessa Division

(b) Give the date and length of the sentence to be served in the future: January 13, 2011
16 years of Federal Supervised Release

(c) Have you filed, or do you intend to file, any petition attacking the judgment for 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: N/A

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: _____

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:** See Attachment for Question 20 page 6.1

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

See page 6.1

B. **GROUND TWO:** See page 6.1

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

See page 6.1

ATTACHMENT FOR QUESTION 20

GROUND ONE: Counsel failed to properly inform petitioner ("**Morrison**") of the applicable laws that affected his decision to reject a plea offer of seven years incarceration, in violation of his rights under the Sixth and Fourteenth Amendment. Because of the ineffective assistance of counsel, Morrison was sentenced to 16 years instead of seven years prison.

SUPPORTING FACTS FOR GROUND ONE:

Morrison thought he would receive a new jury trial or an evidentiary hearing, then ultimately receive an acquittal based off of his interpretation of the plain language of Texas Penal Code 22.011, 6.02, 8.02, and 2.01. He filed a pro se motion requesting a new jury trial among other things. ^(SEE EXHIBIT "D") Counsel did not properly counsel Morrison that his rationale was an incorrect legal rule, or that his improperly filed pleadings would be futile. Morrison went into the revocation hearing expecting relief, but was sentenced to 16 years. If Rogers would have properly counseled Morrison, Morrison would have accepted the seven year plea offer.

GROUND TWO: Texas courts have violated the Separation of Powers Doctrine and the Fourteenth Amendment of the Untited States Constitution by violating Article 2 § 1, Article 1 § 19, and Article 1 § 28 of the Texas Constitution in regards to how they have suspended law by deeming 22.011(a)(2)(A) ("**22.011**") strict liability, despite the plain language of the required culpable mental state ("**CMS**") in conjunction with Texas Penal Codes 6.02, 8.02, 2.01, and Government Codes § § 312.002, 311.002, 311.011, 311.012, and 311.022. This separation of powers violation has denied Morrison his right to Due Process.

SUPPORTING FACTS FOR GROUND TWO:

Since its enactment in 1983, Texas courts have suspended or given no effect to 6.02, 8.02, 2.01, or the required CMS in 22.011 in opposition of the plain language and legislative intent of these statutes which affect 22.011's CMS. They have made this determination by first going to extratextual factors, outside the plain language of the statutes and citing pre-1983 law to determine that the complainant being a child is not an element of the crime in regards to the prescribed CMS, suspending 2.01. 2) Negating the CMS prescribed in 22.011, suspending 6.02. 3) Saying mistake of fact cannot be a defense, suspending 8.02. Morrison had to involuntarily plead guilty, even though according to the plain language of the statutes he was not guilty of all elements of the offense as defined in 22.011, and was ultimately sentenced to 16 years in prison.

C. **GROUND THREE:** See page 7.1

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

See page 7.1

D. **GROUND FOUR:** See page 7.1

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

See page 7.1 for facts supporting ground four

See page 7.1 for ground five

See page 7.1-7.2 for facts supporting ground five

See page 7.2-7.3 for ground six

See page 7.3 for ground seven

See page 7.3-7.4 for ground eight

See page 7.5 for ground nine

See page 7.5 for ground ten

See page 7.6 for ground eleven

See page 7.6-7.7 for ground twelve

See page 7.7-7.8 for ground thirteen

See page 7.8 for ground fourteen

21. Relief sought in this petition:

See page 7.9

GROUND THREE: 22.011 is unconstitutional on its face and as-applied to Morrison because it violates the Equal Protection Clause of the Fourteenth Amendment by subjecting unmarried adults who engage in the prohibited acts with a 14 to 16 year old minor to 20 years in prison (along with registering as a sex offender for life), while allowing the same exact conduct to be legal to adults who are married to the 14 to 16 year old minor. This equal protection violation causes 22.011 to be underinclusive.

SUPPORTING FACTS FOR GROUND THREE:

The right to marry or not to marry, the right to procreate, the right to copulate, and the freedom of intimate association are all fundamental, natural rights that are protected by the First Amendment and are involved in 22.011, therefore, this equal protection claim, as well as the others are subject to the Strict Scrutiny Analysis.

GROUND FOUR: 22.011 is unconstitutional as-applied to Morrison's specific situation because it violated his equal protection rights by sentencing him to a 16 year prison sentence for engaging in the prohibited acts, while allowing Morrison's 18 year old cousin Tyler White ("**White**") who brought the minor to Morrison's house with alcohol, and told Morrison and Morrison's brother Jason Morrison ("**Jason**") that she was 21 years old. White partook in the exact same prohibited acts as the Morrisons, but was not charged with the crime because he fell into the three year defense the statute offers.

SUPPORTING FACTS FOR GROUND FOUR: In this case the disparity of treatment between the Morrisons and White does not wholly relate to the objectives of the statute, or the defense the statute offers, because White's actions in the offense and his age did not mitigate any of the evil as perceived by the state in order for him not to be charged with the offense, while the Morrisons were imprisoned for doing the same conduct to the same minor at the same time. This equal protection violation is underinclusive in its reach.

GROUND FIVE: 22.011 is unconstituional on its face and as-applied to Morrison's situation because (by the way it has been interpreted by the Texas courts) it treats violators of 22.011 differently from violators of all other felonies, obscenity laws, and common laws, by subjecting people to a felony statute that imposes a severe sentence of incarceration, while not requiring the presumption of a mens rea to the facts that make the statute a crime.

SUPPORTING FACTS FOR GROUND FIVE:

22.011 is the only felony that has the requirement of a CMS and does not dispense

(7.1)

with any mental element, yet is nevertheless, considered by the Texas courts as being strict liability, despite Supreme Court, and Fifth Circuit Holdings of proper statutory construction that say otherwise.

22.011 is the only statute that Penal Code 6.02 does not apply to, according to the Texas court of Appeals. That also violates equal protection of laws because the legislature never specifically said 6.02 does not apply to 22.011, *AS Required by LAW.*

GROUND SIX: 22.011 is unconstitutional because it violates the First, Fifth, Ninth, and Fourteenth Amendments of the Constitution by being overbroad in its strict liability interpretation.

SUPPORTING FACTS FOR GROUND SIX:

It is a First Amendment protected right for adults to copulate and to form intimate personal relationships with each other without governmental interference. The government may not inhibit nor make laws that chill or curtail First Amendment protected fundamental rights. They may regulate some protected conduct like sexual conduct, but the regulation must be justified by a compelling state's interest, and the statute must be narrowly drawn to express only the compelling State's interest at stake. Because 22.011 is interpreted as being strict liability, it does not matter if the 14 to 16 year old minor looked, acted, or portrayed herself as an adult, or even had a fake identification that showed she was an adult, as long as it can be proved that she was a minor and the defendant had sex with her, the defendant is subject to 20 years in prison without any kind of defense regarding his mens rea. This strict liability nature of 22.011 is unconstitutionally overbroad on its face and as-applied to Morrison because it has and will continue to inhibit his and others' First Amendment right to copulate. It has also chilled their freedom of intimate association by forcing them to scrutinize age documents of every 17 to 25 year old female they may be interested in exercising this natural, fundamental right with, or go to prison for 20 years. Since 22.011 is considered absolute strict liability regarding the defendant's knowledge of the status of the minor's age, even a fake identification card presented to them would not save them from a conviction or prison sentence. The strict liability interpretation has chilled and even froze Morrison's and others' right to copulate and form intimate personal relationships with the 17 to 25 year age group in fear that one could in fact be a minor who duped them into thinking she was an adult. This chilling affect on constitutionally protected rights, makes the strict liability interpretation overbroad by causing any person 20 years or older, who knows about its effects, choose only sex partners who are older than 25 years to alleviate the possibility they may end up in prison for 20 years for making a mistake in judgment of someone's

age, without any kind of defense. This strict liability interpretation also makes people subject to extortion, blackmail, entrapment, and other sinister motives by someone who is looking to gain at the other's expense.

GROUND SEVEN: 22.011 is unconstitutional on its face and as-applied to Morrison because it violates Due Process Under the First and Fourteenth Amendments of the Constitution by being unconstitutionally vague and ambiguous.

SUPPORTING FACTS FOR GROUND SEVEN:

As written, 22.011 has been and will continue to be interpreted in different ways. One like the Texas Courts of Appeals have interpreted it, as applying the CMS to only the act of causing the penetration of the sexual organ, that happens to be a sexual organ of a child. Or two, the intentionally or knowingly mens rea requirement has been interpreted by Morrison, as well as other people of ordinary intelligence, as also applying to the act that makes the statute criminal: To commit an offense a person **must intentionally or knowingly** cause the penetration of the sexual organ **of a child** by any means. The CMS in this interpretation is more naturally read to modify the entire statute, making the actor criminally culpable only if he knew the sexual organ he penetrated was one of a 14 to 16 year old child's.

Having two different interpretations, one that is interpreted by the plain language of the statute that the legislators prescribed, which have no indication of strict liability, and the other being interpreted with a subjective view by the Texas appellate courts, making it strict liability even when the legislature did not explicitly dispense with any mental element, makes 22.011 unconstitutionally vague because people of ordinary intelligence, Morrison included, cannot read into the statute any strict liability indicators, therefore, they have no fair warning and have not been properly notified of the forbidden "strict liability" conduct of the statute, that is only mentioned in some case law, which was actually all predicated from pre-22.011 law.

The vagueness of 22.011 has also not established determinate guidelines for law enforcement and can and has impermissibly deligated basic policy matters to policemen, judges, and juries on a subjective basis, and has and will continue to cause arbitrary and discriminatory applications by causing selective enforcement of 22.011.

GROUND EIGHT: Morrison's rights under the Sixth, Fourteenth, and Article 1 § 9 clause 2 of the United States Constitution were violated when the trial court abused its discretion in overruling Morrison's Motion for Continuance, which prevented him from exercising his constitutional right for Writ of Habeas Corpus

in the trial court, and from objecting to and preserving on record the issues raised in this instant Writ of Habeas Corpus for further review. The trial court also abused its discretion by not appointing counsel to effectively counsel him about his decisions relating to his habeas corpus issues, which prevented him from properly filing his complaints.

SUPPORTING FACTS FOR GROUND EIGHT:

Morrison presented a Motion for Continuance at the beginning of his Motion to revoke probation hearing in order to postpone his revocation so he could have a pre-conviction Writ of Habeas Corpus hearing heard under Texas Code of Criminal Procedure 11.07 § 2 and then be afforded a new jury trial before he was convicted of the original 22.011 charge that he was on deferred adjudication probation for. (See RR3 pp.5-6, and Exhibits "E", "J"). The Motion for Continuance- if granted, would have allowed Morrison to assert his rationale- was overruled by the trial court because the pro se letter he sent to the court was not considered a Writ of Habeas Corpus because:

"[Morrison] has counsel and when you have counsel, then counsel files any motions that you see necessary." (RR3 p.9).

At the time Morrison filed that letter on 3/5/11, Tom Morgan was his counsel and was a conflict of interest, therefore Morrison was acting as a pro se litigant at the time he filed the letter, making it a proper filing and not hybrid like the trial judge said. Judge Darr abused her discretion in overruling Morrison's Motion for Continuance because he had counsel and counsel should have filed writ.

The trial judge then asked Rogers if he had seen the letter, in which he said it was out of his scope of employment to do any kind of writ. Judge Darr abused her discretion because she did not allow Morrison the right to assert his complaint through a pro se writ of habeas corpus or grant the Motion for Continuance to allow Morrison time to properly file his pre-conviction writ of habeas corpus issues. She also did not properly appoint him counsel who would have properly counseled him on the matter before he was convicted at the Motion to Revoke hearing.

These abuses of discretion by the court prevented Morrison from exercising in his right to writ of habeas corpus, and thwarted him from being able to object to the issues raised in this Writ of Habeas Corpus, which amounts to a violation of due process. Under the trial court's reasoning to deny Morrison's continuance, how is a regular citizen suppose to exercise their right to Writ of Habeas Corpus if they cannot do one pro se while having counsel, but at the same time counsel would not help with it because he was not assigned to do it? That in essence is suspending the right to Writ of Habeas Corpus.

GROUND NINE: Trial counsel, David Rogers, was ineffective, denying Morrison's Sixth and Fourteenth Amendment rights by failing to request a ^{SEPARATE} punishment hearing during or before the probation revocation hearing.

SUPPORTING FACTS FOR GROUND NINE:

At Morrison's probation revocation hearing the trial court found Morrison's violation of probation allegations to be true and sentenced him to 16 years prison. (See RR3 pp.65-66). Prior to the pronouncement the trial judge asked:

"Is there any legal reasons sentence should not be pronounced at this time?"

Rogers said:

"No your Honor."

Rogers was ineffective by not requesting a separate punishment hearing to allow Morrison character witnesses to testify on his behalf before sentencing. Morrison went into the probation revocation hearing thinking it would be continued so his pre-conviction Writ of Habeas Corpus would be resolved before he was revoked and sentenced to prison. Morrison was also not notified about the hearing until April, 26, 2011, two days before the hearing, therefore Morrison did not have any character witnesses lined up for the hearing.

GROUND TEN: Morrison's rights under the First, Fifth, Sixth, and Fourteenth Amendments of the Constitution were violated when the trial court and his attorney both denied his right to address the court on his own behalf.

SUPPORTING FACTS FOR GROUND TEN:

Before the court was adjourned and shortly after the sentence was pronounced, Morrison asked the court:

"Can I say something?" (RR3 p.66).

Rogers and the court did not allow Morrison to speak on his own behalf. Morrison wanted to be heard, but was not allowed and that violated his constitutional rights. Morrison wanted to explain his situation to the court so it would be known that he did not have the opportunity to obtain character witnesses and to request a separate punishment hearing so to have witnesses to testify on his behalf. He also wanted to explain his reasoning for rejecting the seven year offer, and make sure his premise behind the letter was explained for the record. Since Morrison was denied his constitutional right to be heard by himself, he lost the opportunity to ask for a separate punishment hearing so he could be able to exercise his right to the compulsory process of obtaining witnesses to testify in favor. He was also unable to preserve for the record the issues he now raises on the instant Writ of Habeas Corpus.

GROUND ELEVEN: Morrison's rights under the Sixth and Fourteenth amendments were violated when Morrison's appellate counsel, David Rogers, did not raise on appeal the trial court's error in overruling his Motion for Continuance.

SUPPORTING FACTS FOR GROUND ELEVEN:

David Rogers asked for a Motion for Continuance for Morrison's Motion to Revoke Probation Hearing so Morrison could assert his habeas corpus issues before the trial court, before he was convicted of the charge he was on probation for. (See RR3 PP.5-9, and Exhibit "J").

The Motion for Continuance was denied and the trial court went ahead with the Motion to revoke probation hearing (RR3 p.11). Morrison was harmed because his probation violations were found to be true and he was sentenced to 16 years prison.

On May 24, 2011 Rogers filed for a Motion for New Trial and Motion for Arrest in Judgment. (See Exhibit "K"). In ground four was a complaint that the trial court erred by not granting Morrison's continuance.

On July 20, 2011 Rogers filed for notice of appeal.

On October 10, 2011 Rogers filed appellant's brief. He raised five grounds, and despite Morrison's request, Rogers did not raise the overruling of the Motion for continuance on appeal, which harmed Morrison by that ground not being in front of the Court of Appeals for review. (See Exhibit "L", and "M").

If Rogers would have been effective and he would have properly raised that issue on appeal, there is a reasonable probability, by reasonings stated in ground eight about Morrison's right to writ of habeas corpus being denied, that the Court of Appeals would have held a decision in his favor. Morrison's issues would have been properly preserved for review as well.

GROUND TWELVE: Morrison was denied effective assistance of counsel in violation of his Sixth and Fourteenth Amendment rights, when trial counsel in 2004, Ian Cantacuzene, failed to investigate, and failed to object and preserve for further review Morrison's habeas corpus issues that he now addresses.

SUPPORTING FACTS FOR GROUND TWELVE: Prior to Morrison's pre-trial hearing on May, 6, 2004, Morrison discussed with his attorney, Cantacuzene, on several occasions, that the female in his offense represented herself as an adult and that he was unaware of the nature of the crime when he engaged in the prohibited conduct, and he felt he should not be criminally responsible because it did not seem fair that he could go to prison for doing a crime that he did not know he did, when a minor who looked and acted like an adult, came to his house with alcohol, represented herself to be an adult, and initiated and consented to the sexual conduct, especially since his cousin who brought her over and did the same acts was not even charged.

At pre-trial Morrison knew nothing about the law and relied solely on Cantacuzene telling him that it did not matter that he did not know the girl was a child, he would still go to prison for 15 to 20 years if he went to jury trial because "ignorance of the law is no defense", so Morrison had to plead guilty and accept the offer of nine years deferred probation.

Cantacuzene's counsel fell below a professional standard of reasonableness because he failed to properly investigate and research Morrison's case. Cantacuzene should have recognized that the strict liability aspect of 22.011 was predicated off of the pre-1983 law, and the proper reading of 22.011 in conjunction with 6.02, 8.02, and 2.01, along with Supreme Court statutory interpretation holdings, made the strict liability interpretation questionable, as Morrison has proved in grounds two and five. He also failed to research and object to the Courts of appeals' misinterpretation of 22.011's plain language, and the unconstitutional overbroad and vagueness effects that the strict liability interpretation causes. He also failed to object and preserve for further review the equal protection violations that Morrison raises now. Prejudice will be in brief.

GROUND THIRTEEN: Morrison was denied effective assistance of counsel in violation of his sixth and Fourteenth Amendment rights when his probation revocation counsel David Rogers failed to investigate, and failed to object and preserve for further review Morrison's habeas Corpus issues that he now addresses.

SUPPORTING FACTS FOR GROUND THIRTEEN:

Prior to Morrison's probation revocation hearing on April 28, 2011, Morrison discussed with his counsel, David Rogers, on several occasions through correspondence and two face to face meetings that the female in his offense represented herself to be an adult, and he was unaware of the nature of the crime when he engaged in the prohibited conduct. And he felt by how the plain language of the statute was written that he should not be held criminally responsible for 22.011, and he should get a new jury trial so he can show the jury he did not intentionally or knowingly cause the penetration of the sexual organ "of a child" by any means. Morrison showed Rogers the plain language of how the statute was written by the legislature, along with the other penal codes that supported his rationale. (See exhibit "E" and Statement of Facts).

Rogers' counsel fell below a professional standard of reasonableness because he failed to properly investigate Morrison's case, and to research the law, and recognize that the Courts of appeals' strict liability interpretation was predicated on pre-1983 law. He failed to object to the Courts of appeals' Misinterpretation of 22.011's plain language regarding the prescribed CMS in conjunction with 6.02,

8.02, and 2.01, and he failed to investigate and object to the unconstitutional overbroad and vagueness effects that the strict liability interpretation has generated. He also failed to investigate and object to the unconstitutional equal protection violations that are inherent in the statute with it being strict liability, which Morrison raises now. Prejudice will be in brief.

GROUND FOURTEEN: Morrison's rights under the First, Fifth, Sixth, Fourteenth, Amendments, and Article 3 § 1 of the United States Constitution, along with Article 2 § 1, Article 1 §§ 19 and 28 of the Texas Constitution were violated by the Courts of Appeals' Separation of Powers violation proved in ground two, and the Equal Protection of Laws violation proved in ground five. Morrison is therefore actually innocent of the 22.011 charge because if it was not for the Separation of Powers violation as stated in ground two, or the Equal Protection of Laws violation as Stated in ground five, a jury of ordinary intelligence would not have reasonably found Morrison guilty of all the elements of 22.011 as the plain language and legislative intent of 22.011 suggests.

RELIEF SOUGHT IN THIS PETITION

- 1) If 22.011(a)(2) is deemed unconstitutional on its face or as-applied to Morrison's situation in any of grounds 2-7 then reverse his conviction and sentence, order prosecution suspended, and order Morrison's immediate release from prison.
- 2) If it is found that the proper interpretation of 22.011(a)(2) requires that the prescribed CMS modifies "of a child", or that it allows for a mistake of fact defense regarding the facts that constitute the offense as being criminal (that it was a child's sexual organ), then reverse Morrison's conviction and sentence and remand for new trial, or grant acquittal and order his immediate release from prison.
- 3) If it is found that Morrison's counsel was ineffective and he suffered prejudice regarding ground one, reverse his sentence and order prosecution to reoffer the seven year plea offer that he rejected based from the ineffective assistance of counsel as done in Lafler v. Cooper 132 S.Ct 1376 (2012).
- 4) If it is found that 22.011(a)(2) is ambiguous and that ambiguity caused Morrison to reject the seven year plea, then invoke the rule of lenity and change Morrison's sentence to seven years, or grant him an acquittal and order his release from prison.
- 5) If it is found that 22.011(a)(2) has been interpreted wrongly regarding the state courts' strict liability interpretation, then determine that Morrison was denied right to present a defense as the plain language of the statutes (22.011, 6.02, 8.02, and 2.01) suggest, and that he did not engage in every element of the crime as intended by the plain language and legislative intent, and make the ruling that he is actually innocent of the charge, and order his immediate release from prison, or vacate and remand conviction and sentence to trial court for new trial.
- 6) If it is found that any issues that Morrison brings to this fine court have merit, then grant an evidentiary hearing to shed light on any issues that are outside the record, or give him relief as this Judicious Court sees necessary.

22. Have you previously filed a federal habeas 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.

N/A

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.

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:

		David Rogers 214 W. Texas Avenue Ste 811 Midland, TX 79701-4616
(a)	At preliminary hearing: <u>Pre-trial 2004</u>	<u>Ian Cantacuzine</u>
(b)	At arraignment and plea: <u>Rogers 2011</u>	Ian Cantacuzine 203 W. Wall St. Ste. 603 Midland, TX 79701
(c)	At trial: <u>David Rogers 2011</u>	<u>IAN CANTACUZONE</u>
	<u>Ian Cantacuzine 2004</u>	<u>1605 N. 815 SPRING ST.</u>
(d)	At sentencing: <u>David Rogers 2011</u>	<u>MIDLAND TX 79701</u>
(e)	On appeal: <u>David Rogers</u>	
(f)	In any post-conviction proceeding: <u>Morrison pro se</u>	

(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.¹

N/A

¹ 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.

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

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

May 8, 2015 (month, day, year).

Executed (signed) on May 7, 2015 (date).

 5/7/15
Signature of Petitioner (required)

Petitioner's current address: Jared Morrison #1747148
Huntsville Unit
815 12th Street
Huntsville TX 77348