

VOLUME 1 OF 2

83021-01

EX PARTE

Application for Writ of Habeas Corpus

From Midland County

JARED MORRISON

(NAME OF APPLICANT)

385TH Court

TRIAL COURT WRIT NO. **CR29320 A**

CLERK'S [REDACTED] SHEET

APPLICANT'S NAME (as reflected on the Judgment)
JARED MORRISON

This document contains some pages that are of poor quality at the time of imaging.

OFFENSE (as described on the Judgment)
SEXUAL ASSAULT OF A CHILD

PLEA: **GUILTY**

**RECEIVED IN
COURT OF CRIMINAL APPEALS**

CAUSE NO. (as reflected in Judgment)
CR29320

MAR 18 2015

SENTENCE (as described on the Judgment)
16 YEARS TDCJ

Abel Acosta, Clerk

TRIAL DATE: (date upon which sentence was imposed)
APRIL 28, 2011

JUDGE'S NAME (Judge Presiding at Trial)
ROBIN MALONE DARR

APPEAL NO. (If applicable)
11-11-00191-CR

CITATION TO OPINION (If applicable):
NA S.W.2D

HEARING HELD (pertaining to the Application for Writ)
NO

FINDINGS & CONCLUSIONS FILED (pertaining to the Application for Writ)
YES

RECOMMENDATION (Trial Court's recommendation regarding Application)
DENIED

JUDGE'S NAME (Judge presiding over habeas proceeding)
ROBIN MALONE DARR

I N D E XVOLUME 1 OF 2

APPLICATION FOR WRIT OF HABEAS CORPUS	01
COURT'S DESIGNATION OF ISSUES TO BE RESOLVED AND MANNER OF RESOLUTION OF ISSUES RAISED IN APPLICANT'S APPLICATION FOR POSTCONVICTION WRIT OF HABEAS CORPUS	193
COURT'S ORDER FOR AFFIDAVIT BY DAVID ROGERS TO RESOLVE ISSUES OF FACT RAISED IN APPLICANT'S APPLICATION FOR POSTCONVICTION WRIT OF HABEAS CORPUS	216
COURT'S ORDER FOR AFFIDAVIT BY IAN CANTACUZENE TO RESOLVE ISSUES OF FACT RAISED IN APPLICANT'S APPLICATION FOR POSTCONVICTION WRIT OF HABEAS CORPUS	240
COURT'S ORDER FOR AFFIDAVIT BY TOM MORGAN TO RESOLVE ISSUES OF FACT RAISED IN APPLICANT'S APPLICATION FOR POSTCONVICTION WRIT OF HABEAS CORPUS	256
AFFIDAVIT OF THOMAS S. MORGAN	271
AFFIDAVIT OF DAVID G. ROGERS	273
AFFIDAVIT OF RODION CANTACUZENDE, JR., ATTORNEY AT LAW	278

VOLUME 2 OF 2

MOTION TO CORRECT DISCREPANCIES IN COURT'S DESIGNATION OF ISSUES TO BE RESOLVED AND MANNER OF RESOLUTION OF ISSUES RAISED IN APPLICANT'S APPLICATION FOR POSTCONVICTION WRIT OF HABEAS CORPUS	283
COURT'S AMENDED DESIGNATION OF ISSUES TO BE RESOLVED AND MANNER OF RESOLUTION OF ISSUES RAISED IN APPLICANT'S APPLICATION FOR POSTCONVICTION WRIT OF HABEAS CORPUS	286
ORDER ON POSTCONVICTION WRIT OF HABEAS CORPUS	309
INDICTMENT/INFORMATION	397
DOCKET SHEET	398
JUDGMENT DEFERRING ADJUDICATION OF GUILT	399

JUDGMENT MODIFYING COMMUNITY SUPERVISION	411
JUDGMENT REVOKING COMMUNIT SUPERVISION AND ADJUDICATING GUILT	419
PLEA PAPERS ASSOCIATED WITH THE APPLICANT'S PLEA OF GUILTY ON MAY 6, 2004	436
LETTER OF REPRESENTATION FILED ON 04/12/05 BY MORALES LAW FIRM	451
ORDER APPOINTING RAY FIVECOAT FILED ON 07/28/06	452
LETTER OF REPRESENTATION FILED BY RICK NAVARRETE FILED ON 08/17/06	453
MOTION TO SUBSTITUTE COUNSEL	454
DEFENDANT'S MOTION TO MODIFY TERMS AND CONDITIONS OF COMMUNITY SUPERVISION	456
ORDER ON DEFENDANT'S MOTION TO MODIFY TERMS AND CONDITIONS OF COMMUNITY SUPERVISION	459
MOTION TO MODIFY COMMUNITY SUPERVISION	460
AGREEMENT TO MODIFICATION OF COMMUNITY SUPERVISION	461
ORDER MODIFYING COMMUNITY SUPERVISION	463
MOTION TO REVOKE COMMUNITY SUPERVISION AND TO PROCEED WITH AN ADJUDICATION OF GUILT	465
ORDER APPOINTING TOM MORGAN	466
FIRST AMENDED MOTION TO REVOKE COMMUNITY SUPERVISION AND TO PROCEED WITH AN ADJUDICATION OF GUILT	467
2 PAGE LETTER FROM APPLICATION TO THE COURT FILED 03/03/11	468
4 PAGE LETTER FROM THE APPLICATION TO THE COURT FILED 03/09/11	470
MOTION TO WITHDRAW AS COUNSEL OF RECORD	474
ORDER SUBSTITUTING ATTORNEY	476
MOTION FOR CONTINUANCE	477
OPINION FROM THE COURT OF APPEALS	480

MANDATE FROM COURT OF APPEALS	491
MOTION FOR LIVE EVIDENTIARY HEARING	492
MOTION TO DISQUALIFY AFFIDAVIT OF DAVID G. ROGERS	493
MOTION TO OBJECT TO THE AFFDIAVIT OF IAN CANTACUZENE, JR.	536
MOTION FOR BENCH WARRANT	539
CLERK'S CERTIFICATE	541

13

Case No. CR29320-A
(The Clerk of the convicting court will fill this line in.)

FILED

2014 DEC 30 AM 11:41

ROSS BUSH, DISTRICT CLERK
MIDLAND COUNTY, TEXAS

BY Benna Cain
BENNA CAIN

IN THE COURT OF CRIMINAL APPEALS OF TEXAS
APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

NAME: Jared Morrison

DATE OF BIRTH: March 8, 1976

PLACE OF CONFINEMENT: Huntsville Unit Huntsville, Texas

TDCJ-CID NUMBER: 1747148 SID NUMBER: ?

(1) This application concerns (check all that apply):

- a conviction parole
- a sentence mandatory supervision
- time credit out-of-time appeal or petition for discretionary review

(2) What district court entered the judgment of the conviction you want relief from?
(Include the court number and county.)

The 385th District Court out of Midland County Texas

(3) What was the case number in the trial court?

CR-29320

(4) What was the name of the trial judge?

Judge Robin Darr (For probation revocation and sentencing. 4/28/2011)
Judge Willie Dubose (For original plea hearing for probation. 5/6/2004)

Effective: January 1, 2014

JARED MORRISON 1747148
HUNTSVILLE UNIT
815 12TH STREET
HUNTSVILLE TX 77348

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(5) Were you represented by counsel? If yes, provide the attorney's name:

Yes. David Rogers (For motion to revoke probation. 4/28/2011)
Ian Cantacuzine(For original pre-trial. 5/6/2004)

(6) What was the date that the judgment was entered?

Conviction after revocation was on April 28, 2011.
Plea of guilty for deferred adjudication probation was on May 6, 2004.

(7) For what offense were you convicted and what was the sentence?

Sexual Assault of a Child (16 years incarceration)

(8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?

N/A

(9) What was the plea you entered? (Check one.)

- guilty-open plea
- guilty-plea bargain
- not guilty
- nolo contendere/no contest

If you entered different pleas to counts in a multi-count indictment, please explain:

On May 6, 2004 Morrison pled guilty to the charge of Sexual Assault of a Child for a plea offer of 9 years deferred probation.
On April 28, 2011 Morrison pled not true to probation violations.

(10) What kind of trial did you have?

- no jury
- jury for guilt and punishment
- jury for guilt, judge for punishment

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(11) Did you testify at trial? If yes, at what phase of the trial did you testify?

No

(12) Did you appeal from the judgment of conviction?

yes no

If you did appeal, answer the following questions:

(A) What court of appeals did you appeal to? 11th Court of Appeals (Eastland)

(B) What was the case number? 11-11-00191-CR

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name:

Yes. David Rogers

(D) What was the decision and the date of the decision? Affirmed...5/30/2013

(13) Did you file a petition for discretionary review in the Court of Criminal Appeals?

yes no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? PD 0767-13

(B) What was the decision and the date of the decision? Refused 10/23/2013

(14) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *this conviction*?

yes no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? N/A

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(B) What was the decision and the date of the decision? N/A

(C) Please identify the reason that the current claims were not presented and could not have been presented on your previous application.

N/A

(15) Do you currently have any petition or appeal pending in any other state or federal court?

yes no

If you answered yes, please provide the name of the court and the case number:

N/A

(16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

yes no

If you answered yes, answer the following questions:

(A) What date did you present the claim? N/A

(B) Did you receive a decision and, if yes, what was the date of the decision?

N/A

If you answered no, please explain why you have not submitted your claim:

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17

N/A

- (17) **Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and [REDACTED] have not been presented on the form application, the Court will not consider your grounds.* If you have more than four grounds, use pages 14 and 15 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.**

You may include with the form a memorandum of law if you want to present legal authorities, but the Court will *not* consider grounds for relief set out in a memorandum of law that were not raised on the form. The citations and argument must be in a memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a [REDACTED] of the facts pertaining to your offense and trial in your memorandum.

RECORDER'S MEMORANDUM:
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18

GROUND ONE: Counsel failed to properly inform applicant ("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 Amendments of the United States Constitution, and Article 1, § 10 of the Texas Constitution. (Ineffective assistance of counsel)

FACTS SUPPORTING GROUND ONE:

- (1) On May 6, 2004 Morrison was pressured into pleading guilty to a Texas Penal Code 22.011 (a)(2)(A) ("22.011") violation. He was sentenced to nine years deferred adjudication probation.
- (2) On April 7, 2010 the state filed a motion to revoke Morrison's probation, stemming from several probation violations including failure to comply with Chapter 62 of the Texas Code of Criminal Procedure.
- (3) On January 13, 2011 Morrison pled guilty in federal court to a federal S.O.R.N.A. violation.
- (4) On March 1, and March 5, 2011 Morrison sent pro se letters to the court requesting to withdraw his involuntary 2004 guilty plea. He also requested a new jury trial and new counsel. He sent the letters because of the way he interpreted the plain language of Texas Penal Codes 22.011, 6.02, 8.02, and 2.01 to say the state must prove that he had intent to penetrate the sexual organ "of a child", or that he knew the sexual organ he penetrated was a sexual organ "of a child". (See exhibits "C", "D", "E").
- (5) On March 18, 2011 David Rogers ("Rogers") replaced Morrison's original court appointed counsel Tom Morgan ("Morgan") to counsel Morrison, via the pro se letters Morrison sent to the court.
- (6) On March 4 and again on March 28, 2011 Morrison rejected a plea offer of seven years incarceration because he was confident the court would grant him a jury trial or evidentiary hearing so he could prove that he was not criminally culpable of committing the 22.011 violation because of the way he interpreted the plain language of the statute as saying his intent or knowledge that it was a child's sexual organ that he penetrated was an essential element of the crime, which must be proved by the state. Morrison also thought he was entitled to a mistake of fact defense, and because he was not yet convicted of the 22.011 charge, according to Texas Code of Criminal Procedure 11.07 § 2, the trial court would hand down the decision before his revocation hearing and give him the relief he requested.

(6)

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19

(7) Rogers did not properly counsel Morrison about the applicable laws that affected his decision to reject the seven year plea offer:

(a) Morrison was never counseled about the Court of Appeals' interpretation that the prosecutor does not have to prove knowledge of complainant's age, or that knowledge of age is not considered an element of 22.011, informing Morrison that his rationale, according to the Court of Appeals, was an incorrect legal rule.

(b) Morrison was never counseled about his improper pleadings to the court, nor told that his attempted request for relief would be futile. Morrison's ignorance in this matter caused him to go into the revocation hearing knowing he was guilty of the probation violations, and he knew the state had clear and convincing evidence that he was guilty of the violations, causing him to be sentenced to 16 years instead of seven, all while Morrison was relying on hopes of a new jury trial. (SEE EXHIBIT 19)

(c) Rogers never counseled Morrison how to properly file a pre-conviction Writ of Habeas Corpus so Morrison could assert his argument before the trial court before his deferred probation was revoked and he was convicted.

(d) Rogers never objected to the court overruling Morrison's motion for continuance on the basis that Morrison's letters were not considered a Writ of Habeas Corpus because of the Judge's findings that Morrison was represented by counsel at that time. (See RR 131 p.9). Rogers should have objected to her finding because Morrison had a conflict of interest with Morgan at the time the pleadings were sent to the court, and Rogers was not yet appointed, thus making Morrison a pro se defendant which made the pleadings proper.

(e) Rogers never counseled Morrison that he could not file an appeal, or get a new trial on issues relating to Morrison's original 2004 plea proceeding from an order revoking probation, the way Morrison attempted it almost seven years after the judgement.

(8) Morrison was denied counsel in a critical stage of the criminal proceedings, or whenever his substantial rights were affected, by Rogers stating on record that he was not assigned to help Morrison with his Writ of Habeas Corpus, (See RR 131 p. 6, and 9), despite the fact that Rogers was appointed to be Morrison's counsel by way of the same pleadings that encompassed the Habeas Corpus issues. The court also denied Morrison counsel in this critical stage of the criminal proceeding by not appointing him counsel to assist with his pre-conviction Habeas Corpus issue, even at Morrison's request.

(7)

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20

GROUND TWO: Texas courts have violated Article 2 § 1, and Article 1 § 19 of the Texas Constitution by suspending legislative written law without constitutional authority, in violation of Article 1 § 28 of the Texas Constitution, at the same time violating Article 3 § 1, and the Fourteenth and Fifth Amendments of the United States Constitution in regards to how they have deemed 22.011 (a)(2)(A) strict liability, despite the plain language of the prescribed culpable mental state in conjunction with Texas Penal Code section 6.02, 8.02, 2.01, and Government Code § § 312.002, 311.002, 311.011, 311.021, 311.022. This separation of powers violation has denied Morrison his right to due process.

FACTS SUPPORTING GROUND TWO:

Since its reenactment in 1983, the Texas courts have violated the Separation of Powers Doctrine by going outside of their constitutional boundaries by making and changing law, while encroaching on the legislature's constitutional given duties by suspending or giving no effect to the said statutes, in opposition of the plain language and legislative intent of the statutes affecting 22.011's culpable mental state ("CMS"). The courts have continually justified 22.011 as being a strict liability offense, against legislative intent, by first going to extratextual factors outside of the plain language of the statutes and citing pre-1983 case law to determine:

- (1) That the complainant being a child is not an element of the crime in regards to the prescribed CMS, suspending Penal Code section 2.01.
- (2) The state does not have to show that the actor "intentionally" penetrated the sexual organ "of a child.", or had "knowledge" that the sexual organ he penetrated, in fact was one "of a child's"; even though the statute never plainly dispenses with any mental element, suspending Penal Code section 6.02.
- (3) Mistake of fact cannot be used as a defense in 22.011, suspending Penal Code section 8.02.

The courts' unlawful determination of these statutes along with them not following the Statutory Construction Code in Government Code § § 312.002, and 311.011 to properly interpret 22.011 violated Morrison's due process of law rights by depriving him of his valuable right to present a defense, causing Morrison to involuntarily plea guilty, even though he was, according to the plain language of the statute in 22.011 in conjunction with 6.02, 8.02, 2.01, and Government Code Chapter 311 and § 312.002 not guilty of all elements of the offense defined in 22.011 (a)(2)(A).

21

GROUND THREE: 22011 is unconstitutional because it violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article 1 § § 3, 19 of the Texas Constitution.

FACTS SUPPORTING GROUND THREE:

22.011(a)(2)(A) of the Texas Penal Code is unconstitutional on its face and as-applied to Morrison because it violates the Equal Protection Clause 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 acts to be legal to adults who are married to the 14 to 16 year old minor. This disparity of treatment does not wholly relate to the objectives of the statute, nor does being married mitigate any of the state's interests in protecting the health, safety, and welfare of that age group, nor does marriage protect that age group from the improper sexual advances of adults, nor sexual assault as reasoned by the Court of Appeals and state as a legitimate state's interest for the statute. This violation causes 22.011 to be underinclusive. 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 rights that are protected by the First Amendment and are involved in 22.011, therefore, this equal protection claim is subject to the strict scrutiny analysis.

22

GROUND FOUR: 22.011 is unconstitutional because it violated Morrison's equal protection rights under the Fourteenth Amendment of the United States Constitution and Article 1 § § 3, 19 of the Texas Constitution.

FACTS SUPPORTING GROUND FOUR:

22.011 is unconstitutional as-applied to Morrison's specific situation because it violated Morrison's equal protection rights by sentencing him to a 16 year prison term for engaging in the prohibited acts of 22.011, while Morrison's 18 year old cousin (White) who brought the minor to Morrison's house with alcohol, and told Morrison and Morrison's co-defendant Jason Morrison that she was 21 years old, and partook in the exact same prohibited acts as the Morrisons, but was not charged with the crime, because White fell into the three year defense the statute offers under 22.011(E)(2).

In this particular 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 and involvement in the offense were the same as the Morrisons, and in the particular situation 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 charged and imprisoned for doing the same conduct to the same minor, at the same time. This violation is underinclusive, and it is inconceivable that the state can show any governmental interests that could rationally justify this disparity of treatment between White and the Morrisons in this as-applied equal protection violation.

23

GROUND FIVE: 22.011 is unconstitutional because it violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article 1 § § 3, 19 of the Texas Constitution.

FACTS SUPPORTING GROUND FIVE:

22.011 is unconstitutional on its face and as-applied to Morrison's situation because (by the way it has been interpreted by the Court of Appeals) 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.

22.011 is the only felony that has a prescribed CMS and does not dispense with any mental element, yet is nevertheless, considered by the courts and prosecutors as being a strict liability offense, despite Supreme Court holdings of proper statutory construction that say otherwise. That violates the Equal Protection of Laws because all other felonies, common laws, and obscenity laws that have a prescribed CMS that does not dispense with any mental element do have the presumption of a mens rea and are not strict liability.

22.011 is the only statute that section 6.02 does not apply to, according to the Court of Appeals. That is also a violation of Equal Protection of Laws.

24

GROUND SIX: 22.011 is unconstitutional because it violates the First, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution along with Article 1 § 9, 19 of the Texas Constitution by being overbroad in its strict liability interpretation.

FACTS SUPPORTING GROUND SIX:

It is a constitutionally protected First Amendment right for Adults to copulate and to form intimate personal relationships with each other without interference from the government, and the government may not inhibit or 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 only by a compelling state interest and the statute must be narrowly drawn to express only the legitimate state's interest at stake. 22.011 has been interpreted by the Court of Appeals as being a strict liability offense regarding the defendant's reasonable belief that the minor was an adult. And it does not matter if the 14 to 16 year old minor looked, acted, and portrayed herself as an adult, or even had a fake identification that showed she was an adult, as long as it could 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/scienter.

This strict liability interpretation of 22.011 is not narrowly drawn or even expressly written into the statute, and does nothing to help the legitimate state's interest from accomplishing what the legislature intended the statute for, which is to protect 14 to 16 year old minors from adults who intentionally target them and solicit them for sex. Or know they are having a sexual relationship with a minor in the protected age group. In fact, 22.011 is unconstitutional on its face and as-applied to Morrison because it is overbroad and 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 protected right with, or face going 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 and prison sentence. The strict liability interpretation has chilled and even froze Morrison's and others' right to copulate and form an intimate personal relationship 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 effect on a constitutionally protected natural right, makes the strict liability interpretation overbroad by causing any person 20 years or older, who knows about its

25

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

22.011 would not be overbroad nor unconstitutional on its face, nor applied to Morrison if the statute was interpreted like the plain language of the statute suggests, to modify "of a child", or if the courts at least allowed a reasonable mistake of age defense like the federal laws offer. The statute would then be specifically tailored to support the compelling state's interest and would pass constitutional muster; and it would not impair nor hamper the operation of the statute's compelling and legitimate state's interests, and it would not inhibit nor chill these First Amendment protected rights.

26

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 United States Constitution and Article 1 § 19 of the Texas Constitution by being unconstitutionally vague and ambiguous.

FACTS SUPPORTING GROUND SEVEN:

22.011 has a prescribed CMS that can be and has been interpreted in different ways:

- (1) The intentionally or knowingly mens rea requirement has been interpreted by the Court of Appeals as only applying to the act of causing the penetration of the sexual organ, that happens to be one of a child's. The CMS does not modify "of a child", making 22.011 strict liability in regards to the actors mens rea of whether he knew the 14 to 16 year old complaintant was an adult. Or;
- (2) The intentionally or knowingly mens rea requirement has been interpreted by Morrison, as well as other people of ordinary intelligence, as 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 more naturally is read to modify the entire sentence including "of a child", 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. This is how the plain language of the statute is literally read using correct rules of English grammar and syntax.

Having two interpretations, one that is interpreted by the plain language of the statute that the legislators prescribed, which have no indications of strict liability, and the other being interpreted with a subjective view by the Court of Appeals, 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, and therefore, they have no fair warning and have not been properly notified of the forbidden "strict liability" conduct of the statute, which is only mentioned in case law.

The vagueness of 22.011 has also not established determinate guidelines for law enforcement and can and has impermissibly delegated 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.

The strict liability interpretation implicates First Amendment protected freedoms and has and will continue to chill protected sexual conduct and intimate association, and therefore, must be more narrowly drawn because it demands a greater degree of specificity.

27

GROUND EIGHT: Morrison's rights under the Sixth, Fourteenth, and Article 1 § 9 clause 2 of the United States Constitution, and Article 1 § § 10, 12, 19, and Article 5 section 8 of the Texas Constitution was 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 and preserving on record his issues raised in this instant Writ of Habeas Corpus for further review.

The trial court also abused its discretion by not appointing Morrison counsel to effectively counsel him about the decisions relating to his habeas corpus issues, and to help him with properly filing his complaint, and the court did not properly notify him about the improper ex parte communication that was reason for denying continuance.

THE FOLLOWING SUPPORTS GROUND EIGHT:

FACTS SUPPORTING GROUND EIGHT:

Morrison presented a Motion for Continuance at the beginning of his motion to revoke probation hearing in order to postpone the revocation hearing so he could have a ~~new~~ pre-conviction Writ of Habeas Corpus hearing heard under 11.07 § 2, and 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 RR 3 pp 5-6 and Exhibits "J" and "E" p:7).

The reason for the habeas corpus hearing was to allow Morrison to explain to the court or jury his rationale about the plain language of several statutes in conjunction with each other that would give him an acquittal at a jury trial, since Morrison believed that the minor in his 22.011 charge was an adult at the time of the offense. Because of how he interpreted the plain language of the statutes: 22.011, 6.02, 8.02, and 2.01, he petitioned the court for relief through a pro se letter that he thought would be construed as a pre-conviction Writ of Habeas Corpus that would be heard before the revocation hearing. In the letter he asked to withdraw his coerced and involuntary, 2004 guilty plea due to ineffective assistance of counsel, and to be afforded a new jury trial on the original 22.011 charge so he could explain to a jury that he was not guilty of all the elements of 22.011 as the plain language of the statute suggests. (See Exhibits "D", "E", and "L"; Statement of facts; Ground one and two).

The motion for continuance- that 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," (RR 3 p. 9).

At the time Morrison wrote the letter on March 5, 2011, Tom Morgan was his counsel, not Rogers. Morgan was a conflict of interest because Morgan was part of the reason for Morrison's involuntary plea in 2004, which was the issue in Morrison's letter requesting

relief. That conflict of interest was the reason Rogers replace Morgan as counsel, therefore, because of the conflict of interest, 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. Therefore, Judge Darr abused her discretion in overruling Morrison's continuance because he had counsel and counsel should have filed the writ.

The trial judge then asked Rogers if he had seen the letter. He said he has seen it but it was out of his scope of appointment to do any kind of writ. (RR 3 p.9). Since Morrison's counsel said he was not assigned to do any kind of writ, Judge Darr should have concluded that Morrison had the right to assert his complaint through a pro se Writ of Habeas Corpus and granted Motion for Continuance to allow Morrison time to properly file his pre-trial Writ of Habeas Corpus issues, or she should have granted continuance and appointed Morrison counsel to properly counsel him on the matter before he was convicted at the motion to revoke hearing.

The abuse of discretion of denying the Motion for Continuance prevented Morrison from exercising his right to Writ of Habeas Corpus, and it thwarted him from being able to object to the issues raised in this Writ of Habeas Corpus. It also tainted the record for preservation of Morrison's issues for appeal and collateral attack, 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 him with it because he was not assigned to do it? That in essence is suspending the right of Writ of Habeas Corpus.

GROUND NINE: Rogers was ineffective by not requesting a separate punishment hearing to allow Morrison the opportunity to have character witnesses testify on his behalf to mitigate the punishment before sentencing. This violated Morrison's rights under the Sixth and Fourteenth Amendments of the United States Constitution and Article 1 § 10 of the Texas Constitution.

FACTS SUPPORTING GROUND NINE:

On April 28, 2011 Morrison went to a probation revocation hearing. The trial court found Morrison's violation of probation allegations to be true and sentenced him to 16 years T.D.C.J. (RR 3 p.65-66).

Prior to the pronouncement the trial judge asked:

"Is there any legal reason 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 revocation hearing thinking the hearing would get continued so his pre-conviction Writ of Habeas Corpus would be resolved before he was revoked and sentenced to prison. He was also not notified about the hearing until April 26, 2011, two days before the hearing. Therefore, Morrison did not have character witnesses lined up for that hearing.

Since the trial court did not grant continuance, Morrison wanted to have several prominent citizens of the town who knew his character to testify that he was a hard working and talented business owner, and family man who is an asset to the community, not a danger to society, and that he just made a few mistakes in judgement, but does not belong in prison for a long time. These prominent citizens who knew his character were Morrison's mother Jana Morrison (A long time teacher at Midland Freshman High School) who would have obviously testified to her sons good character. A witness not so obvious, his probation officer from 2006 to 2010, Kim Rogers, who also knew his good character because they met at least once a week for four years and discussed his life. Granted Mrs. Rogers was doing her job when she had to file the motion to revoke probation on Morrison, but if she would have been called to testify, Morrison has no doubt that she would have testified about his good character and informed the court that he should not be imprisoned for a lengthy amount of time, which would have mitigated his punishment.

Kim Garcia, Morrison's sex offender treatment counselor who knew Morrison's good character because she saw, counseled, listened to, and read Morrison's thoughts and philosophies every week for three years, would have testified that Morrison was an asset

30

to the community and a loving father to his son and loving husband to his wife and a hard worker that is not a danger to society nor belongs in prison.

Ross Bush, the District Clerk of Midland, who use to be the court/probation office liasion officer who also knew Morrison's character, would have also testified on his behalf and told the court Morrison does not belong in prison.

Jerry Morales, the city's City Counselman At-large, was a client of Morrison's construction business. He would have also testified that Morrison had good character, and benifited the community with his hard work ethics and by treating his clients honorably and always doing them excellent jobs.

Morrison would have also called other clients of his that would have been glad to testify on his behalf, which their testimony would have mitigated his punishment as well.

Morrison's preacher Jim O'Bannion along with other members of his church who knew and loved him would have also testified on his behalf and said nothing but good things about his character that would have mitigated the punishment. (See Exhibits ^{Exhibits 2, 3, 4, 5} ~~Exhibits 2, 3, 4, 5~~ P. 5).

Because Rogers did not request a seperate punishment hearing or call witnesses to testify on Morrison's behalf, Morrison was denied effective assistance of counsel by being denied the compulsory process for obtaining witnesses in his favor that is also guaranteed by the Sixth Amendment. This ineffectiveness caused the court not to hear any mitigating testimony in Morrison's favor and only heard the aggravating factors from the state, which prejudiced Morrison and caused him to receive a longer sentence than he would have recieved had he had an array of witnesses to testify on his behalf.

If Rogers would have asked for a seperate punishment hearing and allowed Morrison the right to the compulsory process of obtaining witnesses in his favor, then the witnesses would have testified on Morrison's behalf and there is a reasonable probability that the witness testimony would have mitigated Morrison's punishment and he would have received a less severe sentence than 16 years incarceration.

GROUND TEN: Morrison's rights under the First, Fifth, Sixth, and Fourteenth Amendment of the United States Constitution, along with his rights under Article 1 § 10, 19 of Texas Constitution were violated when the trial court and his attorney both denied Morrison the right to address the court on his own behalf.

FACTS SUPPORTING GROUND TEN:

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

"Can I say something?" (RR 3 P. 66).

Rogers and the court did not allow Morrison to speak on his own behalf. The First Amendment of the United States Constitution was violated because Morrison was abridged in his freedom of speech and not allowed to speak on his own behalf which violated the Sixth Amendment.

Article 1 § 10 of the Texas Constitution says:

"A defendant shall have the right of being heard by himself or counsel or both."

Morrison wanted to be heard but was not allowed and that violated his constitutional rights. Even though the court had pronounced his sentence, since Rogers did not request a separate punishment hearing, Morrison wanted to ask the court to reconsider the punishment and explain that he was not given the opportunity to have any character witnesses to testify on his behalf and he wanted to ask for a separate punishment hearing so he could have the opportunity to call some of his friends and family to show the court that he has a support group that loves him and they could testify as to his good character, as stated in ground nine. Morrison was worried that the fact that even his own mother was not there to support him and testify on his behalf, surely must have not looked good from the sentencing Judge's view and he figured if he had some people to testify on his behalf it would influence her decision about his punishment to his benefit.

Morrison also wanted to explain to the court his reasoning for rejecting the seven year offer and to make sure his premise behind the letter he sent to the court 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 his favor, and he was also unable to preserve for the record the issues he now raises on the instant Writ of Habeas Corpus.

If Morrison was allowed to exercise his right to address the court there is a reasonable probability that the court would have granted a separate punishment hearing

32

to be in compliance with Morrison's constitutional rights by allowing him the compulsory process of obtaining witnesses in his favor and during the punishment hearing where the witnesses would have testified in Morrison's favor. There is a very reasonable probability that the trial judge would had sentenced Morrison to less than 16 years in prison had she heard the testimony from Morrison's character witnesses.

If the court would have allowed Morrison the ability to allocute and speak on his own behalf, and Rogers was not ineffective by telling him he could not speak, Morrison would have been able to address the court his issues that he wanted addressed in his Habeas Corpus then they would have been preserved on record for further review and there is a reasonable probability the trial judge would have understood his rationale and granted him relief by giving him an evidentiary hearing then a new jury trial or withdrew the proclaimed sentence and sentenced him to the lower sentence of seven years.

GROUND ELEVEN: Morrison's rights under the Sixth and Fourteenth Amendments of the United States Constitution along with Article 1 § 10 of the Texas Constitution was violated when Morrison's appellate counsel David Rogers did not raise on appeal the trial court's err in overruling his Motion for Continuance.

FACTS SUPPORTING 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 RR 3 pp 5-9 and Exhibit "J").

Motion for Continuance was overruled and the trial court went ahead with motion to revoke probation hearing. (RR 3 p.11).

Morrison was harmed because his probation violations were found to be true and he was sentenced to 16 years in prison.

On May 24, 2011 Rogers filed for a new trial and Motion for Arrest in Judgement (See Exhibit "K"). In ground 4 was a complaint that the trial judge erred by not granting Morrison's continuance.

On July 20, 2011 Rogers filed for Notice of Appeal.

On October 10, 2011 Rogers filed the 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 Exhibits "L", and "M").

If Rogers would not have been ineffective 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 Morrison's favor and remanded case back to the trial court so Morrison could have properly addressed his habeas corpus issues at the trial court level and then been granted relief, offered a lesser sentence, or new jury trial. His issues would have then been properly preserved for review as well.

34

GROUND TWELVE: Morrison was denied effective assistance of counsel in violation of his rights under the Sixth and Fourteenth Amendments of the United States Constitution along with Article 1 § § 10, 19 of the Texas Constitution. Morrison's trial counsel in 2004, Ian Cantacuzine, failed to investigate, and failed to object and preserve for further review, Morrison's habeas corpus issues that he now addresses.

FACTS SUPPORTING GROUND TWELVE:

Prior to Morrison's pre-trial hearing on May 6, 2004, Morrison discussed with his attorney, Ian Cantacuzine ("Cantacuzine"), on several occasions, that the female in Morrison's offense represented herself as an adult and 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 as 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 Cantacuzine's telling him "ignorance of the law is no defense:", and that it did not matter that he thought the minor was an adult, he would still go to prison for 15 to 20 years if he went to a jury trial so he had to plead guilty and accept the plea offer of nine years deferred probation.

Cantacuzine's counsel fell below a professional standard of reasonableness because he failed to properly investigate and research Morrison's case. Cantacuzine should have recognized that the strict liability aspect of 22.011 was predicated off of the pre-1983 law, and that a proper reading of 22.011 in conjunction with section 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 ground 2 and ground 5. He also failed to object to the Court of Appeals' misinterpretation of 22.011's plain language and the unconstitutional overbroad and vagueness effects that the strict liability interpretation causes. And he failed to object and preserve for further review the equal protection violations that Morrison raises now.

Morrison was harmed by the ineffectiveness because these issues were not raised or objected to at the pre-trial hearing or in any pre-trial motion, where there is a reasonable probability (because of the strong evidence that existed in support of Morrison's rationale) that Morrison would have received relief had Cantacuzine presented these issues before the trial court. Morrison was also harmed because Cantacuzine did not object and preserve these issues for further review.

35

If Cantacuzine would have done a proper investigation into Morrison's case and researched the plain language of 22.011 and the unconstitutional effects that the strict liability interpretation has had on the statute (which Morrison raises now) and if he would have properly raised the issues at or prior to the May 6, 2004 pre-trial hearing then these issues would have been properly preserved for review, and there is a reasonable probability Morrison would have received relief through the trial court, either by the trial court granting relief through pre-trial motion, or that Morrison would not have pled guilty and gone to jury trial, then proved he was not guilty of all elements of the crime as the plain language of the statute suggests, and then the direct appeal process would have been an available avenue for relief as well, where Morrison could have received relief from one of the constitutional issues that Morrison raises now.

36

GROUND THIRTEEN: Morrison was denied effective assistance of counsel in violation of his rights under the Sixth and Fourteenth Amendments of the United States Constitution along with Article 1 § § 10, 19 of the Texas Constitution. Morrison's trial counsel David Rogers failed to investigate, and failed to object and preserve for further review, Morrison's habeas corpus issues that he now addresses.

FACTS SUPPORTING GROUND THIRTEEN:

Prior to Morrison's probation revocation hearing on April 28, 2011, Morrison discussed with his attorney 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 his crime when he engaged in the prohibited conduct, and he felt that by the way 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 that 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 Statements 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 Court of Appeals' strict liability interpretation was predicated on pre-1983 law. He failed to object to the Court 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.

Morrison was harmed by this ineffectiveness because these issues were not raised at trial, where there is a reasonable probability (because of the strong evidence that existed in support of Morrison's rationale) that Morrison would have received relief had Rogers raised these issues before the trial court. Morrison was also harmed because Rogers did not object and preserve these issues for further review. If Rogers would have done a proper investigation into Morrison's case and researched the plain language of 22.011 and the unconstitutional effects that the strict liability interpretation has on the statute (which Morrison raises now) and if he properly raised these issues at Morrison's revocation hearing or filed the proper objections or pre-trial motions, then these issues would have been properly preserved for review, and there is a reasonable probability that Morrison would have received relief at the trial court level or on direct appeal.

GROUND FOURTEEN: Morrison's rights under the First, Fifth, Sixth, Forteenth Amendments and Article 3 § 1. of the United States Constitution were violated by the Court of Appeals' seperation of powers violations proved in ground two, Morrison is, therefore, actually innocent of the 22.011 charge because if it was not for the seperation of powers violation as stated in ground two, or the violation of Equal protection of laws 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 the statute suggests.

FACTS SUPPORTING GROUND FOURTEEN:

Texas Penal Code section 2.01 states that no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. Morrison has proved that 22.011 has the requirement of an intentionally or knowingly mens rea and that the plain language of the statute and the legislative intent require that the CMS attach to "of a child". Therefore, the legislature did intend that knowledge of the status of the complaintant being a child is an essential element of 22.011.

Morrison has also shown that the Court of Appeals has negated the CMS in 22.011, despite the fact of its existance and that the legislature did not intend to dispense with any mental element, suspending section 6.02 and 2.01. They have also suspended 8.02 the mistake of fact defense as applying to 22.011 without constitutional authority.

Without these constitutional violations the state would have been required to prove Morrison intentionally or knowingly caused the penetration of the sexual organ "of a child" by any means, or at the least would have had to offer Morrison the affirmative defense of mistake of fact regarding the minority of the complaintant.

Because the Court of Appeals violated the Seperation of Powers Doctrine and suspended these laws, and Morrison's Equal Protection of the Laws rights were violated as well, Morrison was denied due process and is actually innocent of 22.011 because he did not fulfill all the required elements of the statute as the plain language and legislative intent suggests. Had the Court of Appeals not violated the Seperation of Powers Doctrine, nor denied him Equal Protection of the Laws as proved in grounds two and five, Morrison would the have gone to jury trial and been acquitted. Because he did not know the female in his case was a child, the prosecutor would not have been able to prove that he intentionally or knowingly penetrated the sexual organ "of a child". Or he could have used the affirmative defense of mistake of fact and proved beyond a preponderance of the evidence that he reasonably believed that the female was 21 years.

38

WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.

VERIFICATION

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF _____

_____, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."

Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20_____.

Signature of Notary Public

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

39

PETITIONER'S INFORMATION

Petitioner's printed name: JARED MORRISON #1747148

State bar number, if applicable: _____

Address: HUNTSVILLE UNIT

815 1276 STREET

HUNTSVILLE TX 77348

Telephone: _____

Fax: _____

INMATE'S DECLARATION

I, JARED MORRISON, am the applicant petitioner (circle one) and being presently incarcerated in HUNTSVILLE, TEXAS, declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on 12/19, 2014.

Jared Morrison
Signature of Applicant Petitioner (circle one)