

NO. CR-29,320-A

FILED

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ROSS BURTON DISTRICT CLERK  
MIDLAND COUNTY, TEXAS  
BY *[Signature]*  
CARRIE A. CAIN

EX PARTE

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IN THE DISTRICT COURT  
385<sup>TH</sup> JUDICIAL DISTRICT

JARED MORRISON

§

MIDLAND COUNTY, TEXAS

**AFFIDAVIT OF DAVID G. ROGERS**

BEFORE ME, the undersigned authority, personally appeared DAVID G. ROGERS, who, by me duly sworn, deposed as follows:

**Initial Appointment and File Review**

I received an order dated March 28, 2100, substituting me for Tom Morgan. I reviewed the Motion to Adjudicate Guilt and I reviewed the District Clerk's file. I reviewed the letter to Judge Darr dated March 5, 2011. I confirmed the plea offer of 7 years in the Texas Department of Criminal justice with the prosecutor.

**1<sup>st</sup> Client Meeting**

Shortly after receiving the appointment, I had a jail conference with Mr. Morrison. I conveyed the plea offer of 7 years. He rejected the offer. We discussed the Motion to Adjudicate and the fact that he was currently serving a federal prison sentence for Failure to Register as a Sex Offender. We spent a great deal of time discussing his March 5, 2011 letter. I informed him I read the letter and also told him that the judge had not read the letter and considered it an ex parte communication that she was not going to review. Morrison was convinced he received ineffective assistance of counsel at his initial plea because he was not advised of any mistake of fact defense. He had spent several hours in the law library researching the issue. He stated he did not know the girl's age and therefore could not be guilty of the offense. I informed him mistake of fact was not a defense, and knowledge or lack of knowledge about her age was not a defense. However, due to his insistence that it was, I told him I would find some case law to prove his position was incorrect. Further, I told him that the judge was not considering the letter as any type of request for post conviction relief. I told him his request was improper and he needed to file a proper writ as set forth in the Texas Code of Criminal Procedure. I specifically informed him that I was not appointed to represent him on any writ, but was only appointed to represent him on his Motion to Adjudicate.

**Investigation and Preparation**

On March 23, 2011, I researched the issues related to the victim's age. I downloaded *Artiga v. State No. 14-97-01418-CR (1999 Tex. App. Lexis 2878)*. This case held that aggravated assault does not require that the defendant knew the age of the child was under 14. I also downloaded *Johnson v. State 967 S.W.2d 848 (Tex. Crim. 1998)*. This case held the State was not required to show that a

defendant knew the victim's age. Additionally, I downloaded *Vasquez v. State* 622 S.W.2d 864 (Tex. Crim. 1981). This case stated ignorance or mistake of law was not a defense. I downloaded *Mateo v. State* 935 S.W.2d 512 (Tex. App-Austin 1996). This case held that the State is not required to allege or prove that the defendant knew the complainant's age, and it was not improper to refuse a mistake of fact instruction.

I reviewed the district attorney's file. I had a phone conference with Ian Cantacuzene, Morrison's trial counsel, regarding his plea. I reviewed the file in *United States of America v. Jared Anthony Morrison; MO-10-CR-213, in the Western District of Texas for the Midland Odessa Division*. This included a review of Morrison's signed factual basis and judgment. Morrison was sentenced to 18 months in the Bureau of Prisons, and the sentence was to run consecutively with the state sentence.

On March 28, 2011, I received a letter from Mr. Morrison, acknowledging that I advised him of his improper filing. Specifically, he stated he realized that he should have filed a habeas corpus. He acknowledged that I told him I found some case law. However, he incorrectly represented that such case law was helpful to his arguments. At no point, did I ever tell Mr. Morrison that the case law I had found would be helpful in overturning his conviction. He also acknowledged that I requested a list of witnesses, but Mr. Morrison represented in his letter that he did not know if anyone would be helpful or not.

On April 7, 2011, I sent Mr. Morrison a letter notifying him that his case was set for trial on April 20, 2011. The trial was continued until April 28, 2011 at the request of the State.

Several days prior to the trial, I had another jail conference with Mr. Morrison. I reviewed my research with him and specifically informed him that he was incorrect in his belief this case law supported his position. I told him this case law established that mistake of fact was not a defense and that the state did not have to prove he knew the victim's age. I also informed him that I discussed the original plea with Ian Cantacuzene and Mr. Cantacuzene disagreed with the allegations included in Mr. Morrison's letter. I explained to Mr. Morrison that at this point, I believed he would not be successful even if he had filed a proper writ, based on the letter's contents. Furthermore, I told him he had not filed a proper writ, and once again, I advised him that I was not appointed to represent him on any writ; the Court was not considering his letter, and any motions for continuances he filed would be denied. I told him based on my file review, my conversation with Mr. Cantacuzene, and my legal research that I did not see any ineffective assistance of counsel and that his legal arguments would fail. I advised him to wait to file any writ until after the hearing on the Motion to Adjudicate.

I stated that it would be best to admit to his conduct while on deferred, accept full responsibility, and plea for mercy. I further told him his current actions were contrary to any acceptance of responsibility. I told him the State could prove the allegations in the motion and if he wanted a lower sentence, he should accept responsibility, explain his actions, and request leniency. I told him witnesses might be helpful but would not serve as an adequate substitute for him accepting full responsibility. Mr. Morrison disagreed with my legal analysis and my recommendations, and he further instructed me to file a continuance. He believed that he would be

acquitted based on the allegations in his letter. Again, I made it clear that his allegations were incorrect and that he was going to trial on April 28, 2011. During this meeting, Mr. Morrison failed to provide me the names of any witnesses and he never indicated he would consider the 7 years plea offer or any other plea offer. Throughout our conversation, Mr. Morrison continued to maintain he was wrongfully convicted.

### **Trial-April 28, 2011**

I filed a motion for continuance with the Court as instructed by Mr. Morrison, and I presented the same at the beginning of the Motion to Adjudicate hearing. While I did not believe the motion would be granted, I filed the motion out of an abundance of caution. The State also requested a continuance because Mr. Morrison had appealed his federal sentence and the State wanted to amend its motion to allege Mr. Morrison was simply charged with the offense of Failure to Register as a Sex Offender instead of actually being convicted of the offense. The trial court denied both requests for continuances, and continued forward with the hearing. The Court stated she was adjudicating Mr. Morrison's guilt and then asked if there was any further evidence prior to assessing Mr. Morrison's punishment. Mr. Morrison had no further evidence, and the State requested that the Court "take judicial notice of the file for that portion of the proceedings, as well as the evidence she heard in the adjudication phase." The Court sentenced Mr. Morrison to 16 years in prison and ordered his sentence to run consecutively with his federal sentence. Mr. Morrison requested to speak to the Court at that time, and I said "no." The Court then gave me the opportunity to consult with Mr. Morrison, and after our consultation, Mr. Morrison did not renew his request to speak with the Court.

### **Post Trial**

I filed a Motion for New Trial and a notice of appeal on behalf of Mr. Morrison. On appeal, I raised the following points of error: (1) the trial court's oral pronouncement and written judgment were in conflict; (2) the sentence was cruel and unusual in violation of both the United States and Texas constitutions; (3) the trial court abused its discretion in ordering consecutive sentences; (4) the trial court erred in admitting the sex offender registration file; and (5) the evidence was insufficient to prove Mr. Morrison violated the terms and conditions of his deferred adjudication. I did not raise the denial of the motion for continuance because I did not believe it was a legally valid issue on appeal as Mr. Morrison did not have any proper writ before the trial court. The appellate court affirmed Mr. Morrison's conviction on appeal.

### **Ground 1**

As set forth above, I informed Mr. Morrison that lack of knowledge and mistake of fact were not defenses. I informed him of this fact during our first meeting and I conducted additional research and located case law contrary to Mr. Morrison's position. I informed Mr. Morrison of the holdings of the case law I found. I informed him that based on my file review, legal research, and phone conversation with Mr. Cantacuzene, he would not be successful on a writ that was based on the allegations he was making in his letter. In other words, I told him he would not be successful. I informed him he had not properly filed a writ and the Court was not considering Mr. Morrison's

letter as a writ. I told him that a post conviction writ was his only vehicle for attacking the sentence and that he should file this type of writ after the revocation hearing. I told him that it appeared he was not accepting responsibility and therefore he should wait to file a post conviction writ. I told him that I did not believe the Court would grant a motion for continuance. I informed him that he was proceeding to trial on April 28, 2011. I informed him that the entire trial would take place on the April 28<sup>th</sup>, 2011. I outlined a strategy for the hearing for both the adjudication phase and punishment phase, but he disregarded my advice, refused to take responsibility for his actions, and failed to plead for mercy from the Court at the hearing.

#### **Ground 9**

As stated above, the Court adjudicated Mr. Morrison guilty of the underlying offense and then asked if there was any further evidence for purposes of assessing Mr. Morrison's punishment. Mr. Morrison did not provide me with the names of any witnesses to be called at the hearing. As stated above, he sent me a letter and indicated he was not sure who could or could not help his case. We had a discussion about the strategy for the hearing, and at no point did Mr. Morrison provide me with the names of any potential witnesses or ask me to contact anyone regarding the case.

#### **Ground 10**

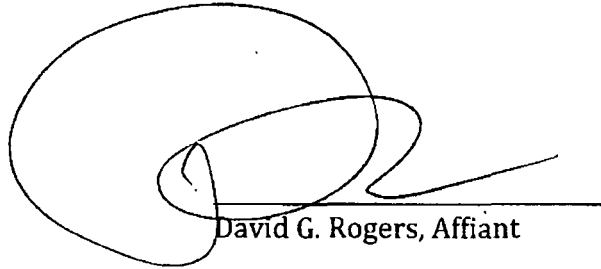
I told Mr. Morrison that he could not speak because I surmised that what he would say would be unhelpful to his case at that particular time in the proceedings. The Court then gave me an opportunity to consult with Mr. Morrison, and I was able to explain to him why he would not benefit from speaking or addressing the Court. During our consultation, Mr. Morrison told me he wanted to address the issues he had raised in his letter. I told Mr. Morrison that if he was simply going to address his issues from the letter and contend he was not guilty of the underlying offense that these representations and arguments would not benefit him in regards to lessening the sentence the Court had just assessed. After our consultation, Mr. Morrison followed my advice and did not request to speak to the Court again. Mr. Morrison knew that this was his final hearing; that the Court would decide whether to adjudicate him; and that if the Court adjudicated his guilt, the Court would then sentence him.

#### **Ground 11**

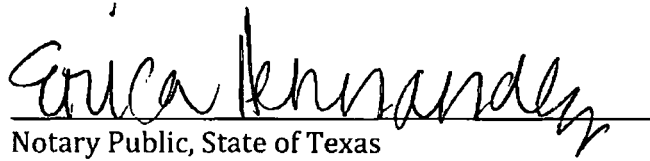
I did not raise the denial of the Motion for Continuance in Mr. Morrison's appeal. I did not believe it was a valid point of error. I could not show harm. Mr. Morrison did not have a proper writ before the Court, and even if he did have a proper writ before the Court, Mr. Morrison's legal basis was incorrect. I reviewed the file and transcript from an appellate standpoint and determined that my initial analysis was correct and that the denial of the motion was not an abuse of discretion. Thus, I did not include the denial of the motion for continuance as an issue on appeal.

**Ground 12**

As stated above, I advised Mr. Morrison that I was not appointed to represent him on any writ and that I was only appointed to represent him on the Motion to Adjudicate. However, as a courtesy to Mr. Morrison, I reviewed the file, performed legal research, and consulted with Mr. Cantacuzene. I then made Mr. Morrison aware of the results of my investigation, and I told him I did not believe he would be successful on his writ. Clearly, Mr. Morrison disagreed with my legal opinion regarding same.

  
David G. Rogers, Affiant

**SUBSCRIBED AND SWORN TO BEFORE ME** on January 30, 2015 by David G. Rogers.

  
Notary Public, State of Texas



By Deputy Notary Public, State of Texas  
Erica M. Hernandez  
Notary Public, State of Texas  
My Commission Expires July 1, 2018  
I hereby certify that copies of the foregoing instrument were delivered to the following: