

CAUSE NO. 29,320 - A

STATE OF TEXAS

§
§
§
§
§

IN THE DISTRICT COURT OF

vs.

385th JUDICIAL DISTRICT

JARED MORRISON

MIDLAND COUNTY, TEXAS

FILED
2015 FEB -3 PH 2:05
ROSS DUSH, DISTRICT CLERK
MIDLAND COUNTY, TEXAS
Benna Cain
BENNA CAIN

AFFIDAVIT OF RODION CANTACUZENE, JR., ATTORNEY AT LAW

The undersigned appeared in person before me today and stated under oath:

“My name is Rodion Cantacuzene, Jr., I am over the age of 18 and am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.”

The undersigned counsel was hired by Applicant, Jared Morrison, on January 15, 2004 to represent him on a charge of Sexual Assault of a Child.

Applicant, Jared Morrison, was charged by indictment on February 26, 2004 with the second-degree felony offense of sexual assault of a child by causing the penetration of the sexual organ of a female child under the age of 17 with the sexual organ of the Applicant which was alleged to have occurred on June 11, 2003 in violation of section 22.011 Texas Penal Code.

The brother of Applicant was also charged with the offense of sexual assault of a child against the same victim sexually assaulted by applicant arising out of the same incident.

Applicant’s brother was represented by Thomas S. Morgan.

The undersigned counsel obtained discovery from the District Attorney's Office and

discussed the facts of the case as well as the law with applicant. Applicant admitted to the undersigned counsel that he had engaged in sex with the victim who he thought to be of legal consensual age.

The undersigned counsel and Thomas S. Morgan met with Applicant and his brother to discuss the consequences of proceeding to trial and the fact that it is not a legal defense at the guilt or innocence phase of a trial that the victim may have lied about her age or that applicant and or his brother reasonably believed that the victim was of legal age to consent to the sexual contact. The undersigned counsel would have explained to applicant that the victim could not consent legally to the sexual assault. The undersigned counsel explained to Applicant that his mistake of fact would not give rise to this defense if he proceeded to trial and that the result of trial would be a conviction for the sexual assault which would result in a final conviction. The undersigned counsel would have explained to applicant the risk in the event of a conviction of a period of incarceration up 20 years in the Texas Department of Criminal Justice. As part of discussions concerning the range of punishment the undersigned counsel would have explained that people convicted of sexual assault of a child are treated very poorly in prison. This treatment could include physical and sexual abuse by other inmates.

Applicant entered a plea of guilty to the indictment and received deferred adjudication. While entering the plea of guilty did not make applicant happy, the Applicant's decision to accept the plea offer in this case was made freely and voluntarily with the knowledge of the facts for and against the defendant, with a knowledge of the full range of punishment and the potential consequences and benefits of a deferred adjudication, with a

knowledge of the requirements to register as a sexual offender and with a knowledge of the consequences of a conviction. The undersigned counsel always explains to a client the right of trial by jury, that the burden of proof is always on the State to prove beyond a reasonable doubt each and every element of the offense charged, a defendant's right to remain silent as well as the right to testify, that the decision to testify was ultimately a defendant's decision, that the defendant also has the right to the appearance confrontation and cross examination of witnesses, and that the defendant always has the right to appeal any conviction or sentence unless such right is waived as part of a plea agreement. The understanding of these rights were also contained in the courts written admonishments which were reviewed and signed by Applicant and the undersigned counsel as part of his plea hearing.

The undersigned counsel has always questioned whether it is just and right that the defense of mistake of fact is unavailable as a legal defense in a sexual assault of a child case. Unfortunately, case law is quite clear that no such defense is legally permissible in the State of Texas. This was true in 2004 when the defendant entered his plea of guilty to the indictment and remains true today at the time the undersigned counsel writes this affidavit.

Applicant unfortunately does not understand that the issue in the case is not whether he intended to have sex with a child victim. The issue was whether in Midland County Texas, and on or about June 11, 2003, did the defendant intentionally and knowingly cause the penetration of the sexual organ of the victim by the sexual organ of Applicant, and was the victim a child younger than 17 years of age on or about June 11, 2003 and not the spouse of Applicant.

The undersigned counsel did inform Applicant that his knowledge of the true age of the child was not an element of the offense under section 22.011 of the Penal Code. The undersigned counsel did inform Applicant that the State did not have to prove that the Applicant knew the child was under 17, only that the child was in fact under the age of 17 at the time of the commission of the offense. The undersigned counsel did inform Applicant that mistake of fact therefore is not a defense to the commission of the offense. The undersigned counsel does not believe that he scared or pressured Applicant into taking a plea bargain in this case. The undersigned counsel only told the Applicant the legal reality of his situation based on the law and the facts of the case. The Applicant while not happy with the advice of counsel did knowingly and voluntarily waive his right to trial by jury and entered a plea of guilty with a knowledge of the facts and the law applicable to his case. The undersigned counsel reviewed all the contents of the District Attorney's file in this case with Applicant. The undersigned counsel did not file a motion to declare the statute unconstitutional as relevant Texas case law has dealt with this issue of the strict liability aspect of 22.011 Penal Code on numerous occasions and confirmed the strict liability of a defendant under 22.011 of the Penal Code. The undersigned counsel does not file frivolous pre-trial motions. Such a motion as Applicant now says should have been filed on his behalf would have been frivolous.

It is unfortunate Applicant finds himself in his current situation, his current incarceration is a result of Applicant's conduct and not a result of ineffective assistance of counsel.

Law Office of Ian Cantacuzene
1605 North Big Spring Street
MIDLAND, TEXAS 79701
Tel: (432) 640-0464
Fax: (432) 640-0468

By: *R Cantacuzene*
Rodion Cantacuzene, Jr.
State Bar No. 03759900

SIGNED under oath before me on the 2 day of February, 2015.

Notary Public in and for

Midland County, Texas



By: *Carrie Stewart*