MO15CV-069

CASE NO.

JARED MORRISON (PETITIONER)	§	IN THE UNITED STATES DISTRICT COURT
	§	FOR THE WESTERN DISTRICT OF TEXAS
V.	§	MIDLAND/ODESSA DIVISION
WILLIAM STEPHENS(RESPONDANT)	§	MIDLAND COUNTY, TEXAS

STATEMENT OF FACTS

On the evening of June 11, 2003, applicant, 27 year old Jared Morrison (**"Morrison"**) and his twin brother Jason Morrison (**"Jason"**) (collectively **"the Morrisons"**) were at their home when their 18 year old cousin Tyler White (**"White"**) and 15 year old Mary [redacted] (**"Mary"**) came to their house. White came in with a 12 pack of beer, and Mary carried in a bottle of tequila. White had previously expressed interest in moving in with the Morrisons, and would sometimes bring attractive females over to party with them so to impress his older cousins. The females would usually purchase him alcohol and also end up having a sexual relationship with him or one of the Morrisons.

White told the Morrisons that Mary purchased the alcohol they brought with them. Mary also represented herself to be 21 years old, and by the way she looked, dressed, and conducted herself (drinking alcohol, smoking cigarettes, and acting mature) the Morrisons never doubted or questioned that she was not 21 years old. After the initial 20 minute ice breaker conversation, they all drank a couple shots of tequila and Mary asked the men if they wanted to do some body shots off of her.[1] They accepted the invitation and did two body shots each, taking turns. White went first, he did one on her neck, meaning that is where the salt was applied. Morrison went second and did one on her stomach, in which she removed her shirt to allow him to do it. Jason then did one on her inner thigh. The second round White did one on the other side of her neck, Morrison did one on her breast, and Jason did one on her vagina. While Jason was licking the salt off of her vagina. Morrison and Mary kissed and made out, while White watched. They all four ended up going into the bedroom where White received oral sex from Mary, Jason performed oral sex on Mary, and Morrison had intercourse with Mary, all being consensual. During that time

1. A body shot takes place, when usually a male, will designate a place on a females body and use the juice from a lime to moisten the skin, then salt will be applied to the moistened skin, the shot glass filled up and placed in the cleavage area of the females breasts, and a lime placed in her mouth. The person doing the body shot will either first lick the salt off the skin, then take the shot (using only his mouth) from her cleavage area, then lastly take the lime from her mouth, again using only his mouth. Or the person can opt to take the the shot first, then take the lime, and finish by licking the salt from her skin.

Mary asked White, "Will you be my man now?", White said, "Yes.", then she told the Morrisons that she wanted to be alone with White. Morrison and Jason went into the livingroom. Twenty minutes later after White and Mary were done having sex they came into the livingroom where they visited with the Morrisons for about fifteen minutes, then Mary and White left in White's truck with Mary driving.

In late November, 2003 Morrison received a call from Detective Thurwanger from the Midland Police Department, asking Morrison to come to the police station to answer a few questions about a crime that he may have witnessed. Morrison met with Thurwanger and she informed him that he was a suspect in a sexual assault and she needed to ask him some questions to clear it up. Morrison was shocked at the allegations and assured her that he would never sexually assault anyone. She then asked if he knew a girl named Mary. Morrison told ~~him~~ her the only Mary he knew, was a girl his cousin (White) brought to his house several months before. Thurwanger told him that was the one and asked him to tell her what happened that night. She then turned on a recording device and Morrison told her about the events that occured that night, and told her that everything that happened was consensual, and there was no sexual assault. Thurwanger then turned off the recording device and informed him that Mary was 15 years old and he would be arrested for sexual assault of a child. During the interview Thurwanger also informed Morrison that Jason admitted to the crime prior to his interview and would also be arrested. She said that White would not be arrested because he and Mary were within three years apart so he had a defense to prosecution. Morrison told Thurwanger that he was unaware that Mary was 15 years old because White and Mary told him she was 21. Thurwanger told him that them not knowing her true age was no excuse because "Ignorance of the law is no defense."

The Morrisons hired attornies Tom Morgan (**"Morgan"**) to represent Jason, and Ian Cantacuzene (**"Cantacuzene"**) to represent Morrison. Initially the attornies told the Morrisons that since there was no violence or coersion, the acts were consensual, Mary portrayed herself to be an adult, and the acts took place at their home they would have a good chance at an acquittal.

Up until the date of the Morrisons' plea hearing on May 6, 2004 their attornies seemed confident about going to trial, so it was the Morrisons' understanding they were going to plead not guilty and have a jury trial. The day of their plea hearing the state offered the Morrisons ten years deferred adjudication probation if they pled guilty. Because of the prior confident nature of their attornies, both Morrison and Jason were very reluctant to accept the offer, and they wanted to go to trial. Both Morgan and Cantacuzene had a sudden change in heart and told the Morrisons that

if they did not plead guilty and take the probation they would go to prison for 15 to 20 years. Morgan and Cantacuzene told them they did not have a chance at trial because of their confession to Thurwanger, and the recorded admission would be used at trial against them. They also told the Morrisons that them not knowing Mary was under the age of 17 did not matter because, "Ignorance of the law is no defense." Both Morrisons still felt like they wanted a jury trial, like initially planned and were still very reluctant to plead guilty. They both rejected the offer to their attornies and told them they wanted a jury trial.

Judge Dubose called Jason up to plead first. Jason initially pled not guilty. Morgan asked the judge permission to counsel Jason off the record. Morgan and Jason stepped away from the podium and Morgan admonished Jason strongly and loudly. Morgan told Jason that if he did not plead guilty then he would have to tell the judge that decision was against his advice, and the media was in the courtroom and would print that in the newspaper and he would surely be found guilty because the whole town would think that his own attorney didn't believe him. Morgan again told him to plead guilty or he would go to prison. The state offered nine years probation and Jason agreed to plead guilty and accept the offer.

Morrison jumped up angered by Morgan's tactics and questioned Cantacuzene about what Morgan was doing. Cantacuzene told Morrison, Morgan was saving Jason's life. Morrison told Jason not to accept the offer and to plead not guilty so they could go to trial. Morgan asked the judge if he could counsel Jason outside the courtroom. Morgan and Cantacuzene took the Morrisons and their mother, Jana, into another courtroom that was not being used, and told them that if they did not take the probation then they would go to prison for 15 to 20 years, and because they would be sex offenders they would get beat up and raped every day they were in prison. Their Mother started to cry and she pleaded with her sons to accept the probation so they would not have to go to prison. Cantacuzene continued to pressure Morrison into pleading guilty assuring him that despite his ignorance of not knowing he commited a crime he would still be found guilty by the jury because they would be instructed to follow the letter of the law. The state reduced Morrison's offer to nine years as well, and both Morrisons eventually pled guilty after much resistance.

Almost seven years later, Morrison was charged with a motion to revoke probation that was derived from several allegations, one which was a federal S.O.R.N.A. violation which he pled guilty to in federal court on January 13, 2011. After Morrison was sentenced to 18 months prison in federal court he was extradited to Midland County Jail to answer the allegations in the motion to revoke. Morrison [illegible]

knew he was guilty of several of the allegations, (See letter to Judge Darr requesting adjudication of probation: Exhibit "A"; page 2 of Exhibit "L", P.7-8 of Exhibit "M"; Also p.? of Exhibit "E").

After Morrison's letter to JUdge Darr (Exhibit "A") was received by the court, Tom Morgan (Jason's previous attorney) was appointed to represent MOrrison for the motion to revoke probation. The state offered a plea deal of 10 years prison, Morrison countered and told MOrgan he would immediately sign a plea deal for four years prison. As MOrrison waited on a response he made use of the law library, and because of how he interpreted the plain language of Texas Penal Codes 22.011(a)(2)(A) (**"22.011"**), 6.02, 8.02, and 2.01 he found out he was not actually guilty of the 22.011 charge he pled guilty to on May 6, 2004 (the charge he was currently on probation forthat the state was going to revoke). Morrison thought the state had to prove every element of the crime, including knowledge that Mary was a child.

Morrison was subsequently told by Morgan that the state offer was at seven years and that was as low as they would go. He did not accept the offer because of how he interpreted the statutes. Morrison, therefore, petitioned the court with two pro se motions (Exhibit "C" and Exhibit "D"), requesting the court to withdraw his guilty plea from 2004, based on the facts that his plea was involuntary due to ineffective assistance of counsel. In the motions Morrison also requested a new jury trial, and because his new appointed counsel was Tom Morgan (one of the attornies responsible for the involuntary plea), he also requested new counsel because of the conflict of interest. Morgan was subsequently replaced by David Rogers (**"Rogers"**) on March 18, 2011.

Morrison thought that he would get a new jury trial or evidentiary hearing that would afford him the opportunity to assert his rationale on how 22.011 is written, as he interpreted the plain language of the statute in conjunction with 6.02, 2.01, and 8.02. Morrison's interpretation was that the prescribed **c**ulpable **m**ental **s**tate (**"CMS"**) of intentionally or knowingly attached not only to the act of causing the penetration of the sexual organ, but also to the entire sentence in the provision which includes the complete verb's object **"of a child"**.

> To commit an offense a person must: **Intentionally** or **Knowingly:** Cause the penetration of the sexual organ **of a child** by any means. (Emphasis added).

Morrison understood this to mean that to commit the 22.011 offense he had to **know** he was penetrating the sexual organ **of a child**, or that he had the **intent** to penetrate a **child's sexual organ**, which is the only element that makes 22.011 a crime. Morrison also interpreted 6.02(b) to mean that since 22.011 never dispensed with any mental element that the CMS (relying on 6.02(a) and 6.02(b)) attached to

of a child, because "of a child" in the phrase "penetrate the sexual organ of a child" is part of engaging in the conduct as the definition of the offense requires: 6.02(a). And 22.011 never expressly nor clearly dispenses with any mental element: 6.02(b). Morrison also thought by how the statute was written, that "of a child" was an element of the offense in regards to Texas penal Code Section 2.01, and since it followed the prescribed CMS, Morrison thought the state had to prove every element of the crime beyond a reasonable doubt, including him **intentionally** or **knowingly** causing the penetration of the sexual organ **of a child** by any means. (Emphasis added). In short Morrison was under the impression that the state had to prove he was criminally culpable by proving he had the intent to penetrate a child's sexual organ or prove he had knowledge that the sexual organ he penetrated was one of a child.

Morrison's rationale was bolstered by the Honorable Justice Baird's dissenting opinion in **Johnson v. State 967 S.W.2d 848, 858 (Tex Crim 1998)**. Morrison thought that he like Johnson would get acquitted on the 22.011 charge by the same rationale that the jury had in Johnson's trial regarding the prescribed CMS in 22.021, which is identical to the prescribed CMS in 22.011. See Johnson at 858:

> "Does 'intentionally or knowingly' refer to what he did with his penis i.e: inadvertant contact vs. intentional contact or does 'intentionally or knowingly' cause the penetration of the female sexual organ of a child refer to knowing that she was a child. We have to understand the meaning of the law."

The trial judge did not answer the question and Johnson was acquitted of 22.021, but convicted of indecency of a child, which does not have the same explicitly prescribed CMS as 22.011 or 22.021. Morrison, therefore, formed the rationale that since he was not charged with indecency with a child, and since a jury of ordinary intellegence interpreted that the CMS could modify "of a child", like Morrison interpreted it, then he could use the Johnson case along with his rationale to get a new jury trial, and an acquittal. Morrison also interpreted the plain language of section 8.02 (the mistake of fact defense) as applying to 22.011.

Morrison relied on the plain language of these statutes to petition the trial court to withdraw his plea and allow his rationale to be heard by a jury of his peers. Morrison was under the impression that since he was appointed new counsel (because of the motions), that Rogers was appointed to counsel him on the best way to get a new jury trial like he requested in his 3/5/11 letter to JUdge Darr (See Exhibit "D").

During their first meeting on MArch 24, 2011, MOrrison explained to Rogers his rationale and desire to withdraw his guilty plea and have a jury trial. He also told Rogers it was imperitive to do this before his revocation hearing because he would then be convicted of the 22.011 charge, have to go to prison, and argue his innocence in the appeal courts, instead of handling it at the trial court level. He also told

Rogers he had several witnesses that could testify that Mary presented herself as being 21 years old, she purchased and consumed alcohol, smoked cigarettes, and drove, and she looked and acted like an adult where any reasonable person would not have even thought to doubt that she was not an adult. Morrison also told Rogers that he would take a polygraph test to prove he thought Mary was an adult.

Rogers told Morrison that he should have filed the motion as a Writ of Habeas Corpus instead of a Petition for Discretionary Review. Morrison asked him if he could fix the mistake and make sure it was filed properly. Rogers said he was not assigned to do a Writ of Habeas Corpus for Morrison, but he had to go to the court house anyway so he would check into somethings. He told Morrison that he would also send some case law that would help. The only thing that Rogers said to controvert Morrison's rationale was that he wasn't sure if section 8.02 could be used as a defense in cases involving children.

They also discussed the motion to revoke allegations. Morrison told Rogers that he was guilty of the majority of the allegations, and that is why it was so important to cancel or at least postpone the revocation hearing so he could withdraw his guilty plea and have a jury trial on the original charge before the conviction was adjudicated. Morrison knew if he went to the revocation hearing, Judge Darr would find the allegations true and he would get a lot more of a severe sentence than seven years. He told Rogers to turn down any state plea offer for the motion to revoke because he was confident that he could not be criminally culpable for his acts in 2003 since he did not know Mary was a child, and since he was not culpable of the crime, then he should not have been sentenced to the term of probation and required to register as a sex offender, therefore, he could not have violated the conditions of probation or the S.O.R.N.A. provision. Rogers told Morrison that he would work on getting the revocation hearing postponed and seemed eager to help Morrison with the miscarriage of justice.

Morrison left the meeting with the impression that Rogers was going to make sure his motions were filed right, his ratioanale about his interpretation of 22.011, 6.02, and 2.01 were sound because Rogers was going to send him case law to back it up, and the court would give him a new jury trial or evidentiary hearing on the ineffective assisrance of counsel/involuntary plea claim that he petitioned the court about.

Rogers never counseled Morrison on how to do a proper writ nor did he inform him that the one he attempted to do would be futile, and he never sent Morrison any of the case law he said he would send. Morrison was in a sense left in the dark thinking he would get the relief he requested.

On March 28, 2011 Assistant District Attorney Michael McCarthy sent Rogers a a letter proposing a seven year plea offer of seven years prison. Morrison refused the offer because he was confident that he would get a new jury trial. That same day Morrison wrote a letter to Rogers, again explaining his rationale and asking Rogers some questions about the best way to accomplish his plans for relief. (See Exhibit "E"). That letter shows Morrison's mind-set regarding his plan to withdraw his coerced guilty plea from 2004 and obtain a new trial. Rogers never responded to that letter, nor did he answer any of the questions Morrison lodged.

On April 7, 2011 Morrison received a letter from Rogers informing him that the revocation hearing was set for April 20, 2011. Morrison wrote Rogers a letter requesting a postponement so a hearing on his habeas corpus issues could be addressed first. Morrison never received a response, and was not called out to court on 4/20. He thought it was postponed because of the motions he filed and the letter he sent to Rogers requesting a continuance. Morrison did not hear anything from Rogers so he wrote a request for his media arrest records at the county jail so he could get his back time and to see if his Writ of Habeas Corpus was filed with the jail records. (See Exhibits "Q", "R").

On April 26, 2011 Morrison received his media arrest record and it indicated that a Writ of Habeas Corpus was filed with the jail on April 1, 2011. Morrison assumed that was the reason his revocation hearing was canceled. Later that day Rogers came to visit Morrison for the second and last time. Rogers told Morrison the revocation hearing was scheduled for April 28, 2011, which was two days away. Morrison asked him to postpone the revocation hearing because he never got the discovery he requested, and he had to go to the Habeas Corpus Hearing first since it was filed. Rogers told him that the writ that was filed with the jail was probably something to do with his federal custody, but would check on it, and draft a motion for continuance. Morrison asked Rogers again if he was going to make sure his Writ of Habeas Corpus was properly filed. Rogers told him "No." and that he would have to hire someone to do that because the writ was not in his scope of counsel. Morrison again explained the importance of getting a continuance on the revocation hearing because if he went to it, knowing he was guilty, before he got a new trial, he would be found guilty of the probation violations, lose his chance to file a Writ of Habeas Corpus to be handed down in the district court because he would then have a conviction, and he would be looking at 20 years in prison because the prosecutor had clear and convincing evidence that he was guilty of the probation violations.

On April 28, 2011 Morrison was called to appear at court. Before the trial

Morrison told Rogers he was not ready for the probation revocation hearing, and asked him again about the continuance so he could get a new jury trial on the original charge before he was convicted at the motion to revoke hearing. Rogers said he already drafted the motion and would present it to the court. He told Morrison that the judge may not grant it and may move to hear the revocation hearing, but if that happens then he will just object to everything and appeal it. Morrison gave him a copy of Texas Code of Criminal Prcedure Article 11.07 § 2 that he got from the law library. He wanted to make sure the court knew since he was not convicted of the sexual assault of a child charge yet, because of the deferred

adjudication, that the district court had jurisdiction to hand down the decision of the habeas relief. Rogers again told Morrison that he was not appointed to help him with the Writ of Habeas Corpus, but would nevertheless, present the continuance and copy of 11.07 § 2 to the court in hopes Judge Darr would rule on it fairly.

At trial Rogers immediately presented the Motion for Continuance to be filed and told the court the reasoning behind it. (See RR 3 pp.5,6). Rogers then read the copy of the 11.07 § 2 that Morrison gave him that morning, and then he explained the harm that would come to Morrison if the continuance and Habeas Corpus Hearing was not given. (See RR 3 pp.6,7).

Judge Darr did not consider the letter that Morrison sent her as a writ because Morrison had counsel and counsel files any motions that the defendant sees necessary. She then asked Rogers if he had seen the letter. He said he read the letter, but it was out of his scope of appointment. (See RR 3 p.9). The court also said the letter was a unilateral communication, or ex parte communication with the court and was improper. (See RR 3 P.9). The trial court went ahead with the motion to revoke, overruling the Motion for Continuance and Writ of Habeas Corpus hearing. She found the allegations to be true and revoked Morrison's deferred probation, found him guilty of the 22.011 charge, and sentenced him to 16 years in prison.

Rogers did not request a separate punishment hearing, and neither the court nor Rogers allowed Morrison the opportunity to allocute. (See RR 3 p.66). Morrison wanted to tell the court that it was not his intentions to plead not true because he was not guilty of the probation violation allegations, but because he wanted to postpone the revocation hearing so he could get a new jury trial for the 22.011 charge based off of how the plain language of the law was written. And if that did not work, he wanted to request a separate punishment hearing so he could subpoena character witnesses to mitigate his sentence. Morrison also wanted to speak so he could preserve his issues on record for appeal. After the sentence was pronounced

Rogers told Morrison not to worry about it because he would appeal the conviction and sentence, and he would come visit him at the jail to talk about it. Rogers never made the visit.

On May 24, 2011 Rogers filed for a new trial and Motion in Arrest of Judgement under the following grounds:

1) The sentence in this cause is contrary to the law and the evidence.
2) The evidence is insufficient to support an adjudication of guilt.
3) The sentence in this case was cruel and unusual and it violated the United States Constitution, Texas Constitution, and Texas Code of Criminal Procedure.
4) The trial court erred in overruling the defendant's motion for continuance and the defendant was harmed by the failure to grant the continuance.
5) The trial court erred in admitting portions of the defendant's sex offender registration file and permitting testimony regarding the defendant's sex offender registration file.
6) The trial court erred in admitting portions of and allowing testimony regarding the defendant's community supervision file. (See Exhibit "K").

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

On october 10, 2011 Rogers filed Appellant's Brief. In it he addresses five issues. He did not address the trial court's err in overruling Morrison's Motion for Continuance or that Morrison was harmed by the error as one of the grounds for review, even at Morrison's request that that be one of the main issues on appeal. (See Exhibits "M" p.1, and "L").

On May 30, 2013 the Eleventh Court of Appeals (Eastland) affirmed Morrison's conviction and sentence.

On June 18, 2013 Morrison filed Notice of Petition for Discretionary Review and asked the Court of Criminal Appeals for a 90 day extension. It was granted the same day, and the deadline to file the P.D.R. was moved to August 30, 2013.

On August 28, 2013 Morrison's Petion for Discretionary Review was filed with the Court of Criminal Appeals.

On October 23, 2013 Morrison's Petion for Discretionary Review was refused.

On November 21, 2013 Morrison filed for MOtion for Extention of Time to file a rehearing. It was denied the same day.

On December 23, 2013 Morrison filed Motion for Reconsideration to grant Extention of Time, and a Request for Rehearing, and a Motion Requesting Enbanc reconsideration. The requests were all denied the same day.

Morrison had until January 20, 2014 to file for Writ of Certiorari with the Supreme Court of the United States. He did not file it.

Morrison has a year after that date to file a Petition for Writ of Habeas Corpus

(2254) in the federal courts for purposes of the AEDPA, as stated in U.S.C. § 2244(d). The filing deadline for Morrison's Petion for Writ of Habeas Corpus (2254) is on January 20, 2015.

Morrison filed his application for Writ of Habeas Corpus (11.07) in the 385th Judicial District Court Midland County, Texas on December 30, 2014. The January 20, 2015 deadline is now tolled.

The 385th Judicial District Court sent Morrison's Application for Writ of Habeas Corpus to the Court of Criminal Appeals (Austin, Texas) after drafting the Court's Findings of Facts and Conclusions of Law on March 6, 2015.

The Court of Criminal Appeals received Morrison's 11.07, and the District Court's findings on March 18, 2015.

Morrison sent the Court of Criminal Appeals his objections to the District Court's Finding of facts and Conclusions of Law on April 6, 2015.

The Court of Criminal Appeals FiledMorrison's Motion to object to the Distrct Court's Findings on April 13, 2015.

The Court of Criminal Appeals refused, **denied**, or dismissed Morrison's Writ of Habeas Corpus (11.07) on April 29, 2015 .

Morrison now files this Petition for Writ of Habeas Corpus (2254) in the United States District Court for the Western District of Texas Midland/Odessa Division, pursuant to 28 U.S.C.§2254, and 28 U.S.C. § 2244 on May 8, 2015, by placing in the prison mailbox receptical to be mailed priority U.S. mail pre-paid with tracking number 9114 9999 4423 8322 3651 02, sent to Jana Morrison to make copies and pay $5 filing fee.

INMATE'S UNSWORN DECLARATION

I Jared Morrison, #1747148 being presently incarcerated at the Huntsville unit Walker County, Texas of the Texas Department of Criminal Justice, declare under the penalty of perjury the aforementioned statements are true and correct.

Executed on:

May 7, 2015

5/7/15

Jared Morrison #1747148
Huntsville Unit
815 12th Street
Huntsville, TX 77348
Pro se