

1-58-20
23-20

27,636-A

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

FILED

APR 18 2007

By *[Signature]*
Clerk of District Court Brazoria Co., Texas
DEPUTY

INSTRUCTIONS

1. You must use this form to file an application for a writ of habeas corpus seeking relief from a final felony conviction (other than a death-penalty case), under Code of Criminal Procedure article 11.07.
2. The clerk of the court in which you were convicted will make this form available to you, on request, without charge.
3. If you do not follow the instructions on this form, the clerk of the court will write a note of the defect on your application and return the form to you without filing it.
4. You must make a separate application on a separate form for each judgment of conviction you seek relief from. Even if the judgments were entered in the same court on the same day, you must make a separate application for each one.
5. Answer every item that applies to you on the form. You may use additional pages only if you need them for item 18, the facts supporting your ground for relief. Do not attach any additional pages for any other item.
6. You must include all grounds for relief, and all facts supporting each ground for relief, in the application you file seeking relief from any judgment of conviction.
7. Do not cite cases or other law in this application. Do not make legal arguments in this application. Legal citations and arguments may be made in a separate memorandum.
8. You must verify the application by signing either the Oath Before Notary Public or the Inmate's Declaration, which are at the end of this form. You may be prosecuted and convicted for aggravated perjury if you make any false statement of a material fact in this application.
9. When the application is fully completed, mail the original to the clerk of the convicting district court. Keep a copy of the application for your records.

IMAGE 3

Cause No. _____
(The Clerk of the convicting court will fill this line.)

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

Paul Gayland Taylor, Jr.	____/____/____
NAME OF APPLICANT (Please print full name)	DATE OF BIRTH
TDCJ/ID-ELLIS UNIT	602058
PLACE OF CONFINEMENT	TDCJ-ID NUMBER

- (1) What court entered the judgment of conviction you want relief from?
(Give the number and county of the court.)

23rd Judicial District-Brazoria County

- (2) What was the cause number in the trial court? 27,636
- (3) What was the trial judge's name? J. Ray Gayle, III
- (4) What was the date of judgment? May 30, 1995
- (5) What was the length of sentence? Life
- (6) Who assessed punishment? (Check one) (a) Judge ☒ (b) Jury ()
- (7) What offense or offenses were you convicted of (all counts)?

Murder

(8) What was your plea? (Check one)

- (a) Not guilty ()
(b) Guilty (x)
(c) Nolo Contendere ()

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A

(9) Did you have a jury trial? (Check one)

- (a) Jury ()
(b) Judge only (x)

(10) Did you testify at the guilt/innocence phase of trial? Yes () No (x)

(11) Did you testify at the sentencing phase of trial? Yes () No (x)

(12) Did you appeal from the judgment of conviction? Yes () No (x)

(13) If you did appeal, answer the following questions:

(a) Which court of appeals? N/A

(b) What was the cause Number? N/A

(c) What was the decision? N/A

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

(e) Did you file a petition for discretionary review? Yes () No (x)

(f) If your answer to (e) was "yes", answer the following questions:

(g) What was the cause number in the Court of Criminal Appeals?

N/A

(h) What was the decision? N/A

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

(14) Have you previously filed an application for writ of habeas corpus under Article 11.07 for relief from this conviction?

Yes ()

No (x)

(15) If your answer to (14) was "yes", answer the following questions:

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

(b) What was the decision? N/A

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

(d) What is the reason the current claims were not presented and could not have been presented in an earlier application?

Not challenging the Conviction. This is a parole
related issue.

- (16) Do you have any petition or appeal pending in any court, either state or federal, attacking the same convictions?

Yes () No (x)

- (17) If you are presenting a claim for time credit, have you presented the claim to the time credit resolution system of the Texas Department of Criminal Justice - Institutional Division?

Yes () No () Not an issue

- (a) If your answer to (17) was "yes", answer the following questions:

What was the date of decision? N/A

Why are you not satisfied with the decision? N/A

- (b) If your answer to (17) was "no", why have you not presented the claim to the time credit resolution system of the Texas Department of Criminal Justice - Institutional Division?

N/A

- (18) State concisely every ground on which you claim that you are being unlawfully confined. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the grounds. See Memo attached

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. The grounds you may raise are not limited to those listed below. However, you should raise in this application all available grounds (relating to this conviction) on which you base your allegations that you are being unlawfully confined.

If you claim one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not simply check any of the grounds listed below.

- (a) Conviction obtained by plea of guilty, which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and empanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.
- (k) Denial of time credits on sentence.
- (l) Improper revocation of parole or mandatory supervision.
- (m) Illegal sentence.

(n) Invalid or defective indictment.

(o) No evidence or insufficient evidence.

(A) What is your Ground Number One: Board of Pardons and Paroles
abused its discretion by denying Petitioner parole.

What are the FACTS (tell your story briefly without citing cases or law): See memo attached.
The Board of Pardons and Paroles requires Petitioner to
overcome the Past which amounts to an impossible obstacle.

(B) What is your Ground Number Two: The Board of Pardons and
Paroles Review Procedures violates Petitioner's Due Process
constitutional rights.

What are the are the FACTS (tell your story briefly without citing cases or law):
The Board of Pardons and Paroles denied parole on the basis
of Petitioner's past, the seriousness of the offense and
future threat to society factors. The Board denied Petitioner
notice and opportunity to present evidence to counter the
Boards assessment. See Memo attached.

(C) What is your Ground Number Three: The Board of Pardons and Paroles review procedures violates Petitioner's Equal Protection constitutional rights.

What are the FACTS (tell your story briefly without citing cases or law): _____

All of the previous arguments are applicable and incorporated in this ground of error. The Equal Protection

is implicated by the Board of Pardons and Paroles granting parole to other similar situated offenders, as well as,

offenders with worst criminal records than Petitioner's record without imposing the same requirements. See memo attached.

(D) What is your Ground Number Four: Board of Pardons and Paroles review procedure violates Petitioner's Eighth Amendment constitutional rights.

What are the are the FACTS (tell your story briefly without citing cases or law):

The Board of Pardons and Paroles denial of parole for the same unchangeable reasons amounts to cruel punishment under the Eighth Amendment when the Board grants other Offenders parole with worst criminal records without making the same demands on other as they do in Petitioner's case. See memo attached.

Page 8 Continuation:

(F) WHAT IS YOUR GROUND NUMBER FIVE: Texas Life Sentence carries the expectation of liberty interest and parole is mandatory.

Petitioner's position is that the Trier of Facts, whether it be a jury or a judge, attaches the expectation of liberty interest upon considering giving out a Life sentence. See memo attached.

Wherefore, applicant prays that the Court grant applicant relief to which he may be entitled in this proceeding.

VERIFICATION

(Complete either the Oath Before Notary Public or the Inmate's Declaration)

Oath Before Notary Public

STATE OF TEXAS, COUNTY OF _____

_____, being first duly sworn, under oath, says: that he is the applicant in this action and knows the content of the above application and according to the applicant's belief, the foregoing allegations of the application are true.

Signature of applicant

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____

Notary Public

Inmates' Declaration

I, Paul Cayland Taylor, Jr.,
(inmate's name)

TDCJ/ID# 602058, being presently incarcerated in
(inmate's identifying number from TDCJ or county jail)

Ellis Unit-1697 FM 980-Huntsville, Texas 77343,
(name of TDCJ unit or county jail)

declare under penalty of perjury that according to my belief the foregoing information and allegations of the application are true and correct.

Signed on 4-15-07
(date)

Paul G. Taylor
Signature of applicant

Signature of attorney (if any)

Address of Attorney:

History

Petitioner has been parole eligible since February 2, 1997, approximately ten (10) years and two (2).

On January 12, 2007, the Petitioner was again denied parole and given a three (3) years Set-off for the next parole review date.

The Texas Board of Pardons and Paroles denied parole under their Administrative Rule 2D. which states as follows; " THE RECORD INDICATES THAT THE INMATE COMMITTED ONE OR MORE VIOLENT CRIMINAL ACTS INDICATING A CONSCIOUS DISREGARD FOR THE LIVES,SAFETY, OR PROPERTY OF OTHERS: THE INSTANT OFFENSE OR PATTERN OF CRIMINAL ACTIVITY HAS ELEMENTS OF BRUTALITY, VIOLENCE, OR CONSCIOUS SELECTION OF VICTIM'S VULNERABILITY SUCH THAT THE INMATE POSES AN UNDUE THREAT TO THE PUBLIC: THE RECORD INDICATES USE OF A WEAPON."

For approximately thirteen (13) years (includes from date of eligibility to next review date), the Texas Board of Pardons and Paroles has denied parole on factors which are impossible for Petitioner to overcome!

I.

Jurisdiction

The 23rd Judicial District Court of Brazoria County,Texas is the original court of jurisdiction. Jurisdiction is not challenged, and the court has jurisdiction over the parties involved and the subject matter.

II.

Issues Present For Review

Error Number One: The Board of Pardons and Paroles Abused Its Discretion By Denying Petitioner Parole.

Error Number Two: The Board of Pardons and Paroles Review Procedures Violates Petitioner Due Process Under the Fourteenth Amendment To The United States Constitution.

Error Number Three : The Board Of Pardons And Paroles Review Procedures Violates The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution.

Error Number Four: The Board Of Pardons And Paroles Violates Petitioners Constitutional Right Under The Eighth Amendment To The United States Constitution.

Error Number Five : Because Texas Does Not Have A Life Without Parole A Life Sentence In Texas Does Contain An Expectation In Liberty Interest Attached By The Trier Of Facts.

III.

ERROR ONE RESTATED WITH ARGUMENTS IN SUPPORT

The Board of Pardons and Paroles abused its discretion by denying Petitioner parole.

The Board of Pardons and Paroles denied Petitioner parole for the same reasons for which he was charge and convicted and sentenced to the Texas Department of Criminal Justice/Institution Division. The denial of parole is therefore based in the seriousness of the offense. Once an offense has been completed, it is impossible to undo and becomes a part of the Past. The Past is unchangeable and for the Board of Pardons and Paroles to require Petitioner to overcome the Past amounts to an impossible obstacle.

Secondly, the Board of Pardons and Paroles failed to take into consideration the Petitioner's accomplishment and institutional behavior record. The Petitioner has since his incarceration obtained a Bachelor Degree from Sam Houston

State University, a major accomplishment for anyone whether in prison or outside of prison. Petitioner's disciplinary record is without blemish having never had a disciplinary infraction.

In addition, the Petitioner has earned the privilege of being in the Craft Shop, a place which allows an offender to engage in leather craft work which is sold to State's employees. The funds which Petitioner earns is spend in assisting his family and support himself with the basic hygiene items. Considering the environment and its limitation, Petitioner is not a burden to his family nor the State.

Since, the only reason for denying parole is the Board's view of the Past, an impossible obstacle to over and minus that, amounts to a "no reason" for denying parole. The Board's failure to consider his outstanding accomplishment since incarceration when weighing both, amounts to an abused of discretion and a meaningless parole review.

IV.

ERROR TWO RESTATED WITH ARGUMENTS IN SUPPORT

The Board of Pardons and Paroles review Procedure violates Petitioner's Due Process under the Fourteenth Amendment to the United States Constitution.

The arguments of Error One are also applicable to this point of error and issues and incorporated as such.

The 14th Amendment Due Process is brought into the Review by the Board of Pardons and Paroles. Once the door has been opened by the Board the Petitioner is entitled to a 14th Amendment review.

As previously stated, the Board of Pardons and Paroles denied parole on the basis of Petitioner's Past, the seriousness of the offense and future threat to society

factors. Had it not been for these two factors, Petitioner would not be in prison now. However, once the Board brings into consideration the future threat issue as the reason for denial of parole, the Board of Pardons and Paroles should have notified Petitioner that it would consider the future threat issue as well as the method which the Board would apply to determine the future risk assessment. In other words, the Board should have provided notice and made know what method would be used to make the determination. Petitioner would have then requested the Board to provide for him an equal an unbiased examination, for example a psychological examination or even a polygraph examination. Polygraph are admissible for parole purposes. The Board of Pardons and Parole can and does use them on parolees.

Petitioner is entitle to notice prior to the decision making process so that he may submit evidence which are favorable to him, or at least balance the factors which would provide an honest and complete review. Such unbiased and complete review would not be a disadvantage to neither of the parties involved.

The Board having considered the future threat to society issue without more than the Past without providing Petitioner notice in advance nor informing him of the method which the Board would apply to come to that determination violates Petitioner's Due Process under the Fourteenth Amendment to the United States Constitution.

V.

ERROR THREE RESTATED WITH ARGUMENTS IN SUPPORT.

The Board of Pardons and Paroles review procedures violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

All of the previous arguments are applicable to this issue and incorporated as well.

The Equal Protection enters into the denial of parole in that the Board of Pardons and Paroles have granted since Petitioner's parole eligibility date parole to other offenders parole with worst criminal records. It is obvious from their own records that the future threat to society factor is nothing more than an excuse to applying a rubber stamp to show the record was before the Board and nothing more than that as used by the Board of Pardons and Paroles.

The same is true for the seriousness of the offense, because none of the offenders granted parole have ever overcome the Past and/nor changed the seriousness of their offense to something less.

Petitioner would request the Board to submit evidence to this or any other court to show otherwise. Petition can and if required submit names of offenders who have a far more or equal criminal record than that of Petitioner which have been granted parole. The Equal Protection of the Fourteenth Amendment also applies to parole issues.

The Board of Pardons and Paroles has violated Petitioner's Equal Protection guaranteed to him by the Fourteenth Amendment to the United States Constitution.

VI.

ERROR FOUR RESTATED WITH ARGUMENTS IN SUPPORT

The Board of Pardons and Paroles violates Petitioner's constitutional rights under the Eighth Amendment to the United States Constitution.

The Eighth Amendment right is implicated under the "Cruel" part of the Eighth Amendment. The "unusual" is not implicated since it is not "unusual" for the Board of Pardons and Paroles to rubber stamp without a meaningful

review nor deny parole for no reason at all, other than decision makers personal reasons or beliefs.

The Petitioner alleges that it is cruel to deny parole for ten/thirteen years for the same reasons under which other similar or worst situated offenders have been granted parole in the past and even now.

Petitioner alleges that it is "cruel" to deny him parole based upon the Board's failure to take into consideration his accomplishments and outstanding record when the Board of Pardons and Paroles grant parole to other which have less accomplishment and a history of disciplinary infractions.

Petitioner alleges that it is "cruel" that the Board of Pardons and Paroles requires him to change the Past but grants parole to others who are similar situated.

Petitioner alleges that it is "cruel" for the Board of Pardons and Paroles to make its determination upon nothing more than the Decision Makers personal and bias views.

Petitioner Eighth Amendment claim is with merits and should be review under each of the allegations present individually and collectively.

VII.

ERROR FIVE RESTATED WITH ARGUMENTS IN SUPPORT.

Because Texas does not have a Life Without Parole punishment scheme, a Life Sentence in Texas contains an expectation of liberty attached not by law but by the Trier of Facts.

First of all, all previous case laws does not apply to this issue because all prior case laws have not address this issue under this argument. That is whether or not a Life Sentence in Texas has attached the expectation of liberty by the Trier of Facts.

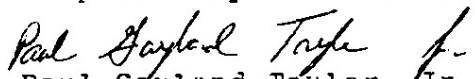
Petitioner position is that the Trier of Facts, whether it be the jurors or a judge both know that the Life sentence imposed does not mean it will be for the rest of the life of the defendant, thus, parole is attached. To believe that a person has to serve the rest of his or her life behind bars would amount to an unconstitutional sentence since life without parole is not a sentence available to the Texas jurors nor judges.

Petitioner's position is that a Texas Life Sentence carries the expectation of liberty attached by the juror or judge and not by statute nor law. Since, in Texas a jury can nullify the punishment, they can also attach an expectation under the same principles.

This issue has never been considered by this nor any other court and there are no case precedent for guidance. However, common sense dictates that since there is not a life without parole, than a life sentence carries the expectation of parole making a Parole mandatory in a Life Sentence. This argument is further supported by the fact that the Texas Legislature has attempted various times to pass a law of Life Without Parole.

For the reasons stated above, Petitioner is entitled to a new parole hearing on the first four errors and parole on the fifth error which makes parole mandatory on the first eligibility date.

Respectfully submitted,


Paul Gayland Taylor, Jr.