

IN THE TEXAS COURT OF CRIMINAL APPEALS

CAUSE NO. 864928

AND

**IN THE 180th JUDICIAL DISTRICT COURT OF HARRIS COUNTY,
TEXAS**

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EX PARTE

WILLIAM DARIN IRVAN,

Applicant

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Case No.

THIS IS A DEATH PENALTY CASE

**APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
ART. 11.071 V. A.C.C.P.**

**FILED IN THE 180th JUDICIAL DISTRICT COURT OF HARRIS,
COUNTY**

ON BEHALF OF APPLICANT BY:

**James Leitner
Attorney at Law
1314 Texas Avenue, Suite 1419
Houston, Texas 77002
TBN. 12187900**

Writ Counsel for William Darin Irvan

APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW WILLIAM DARIN IRVAN, Applicant herein, by and through his attorney, **JAMES LEITNER**, and pursuant to TEX. CODE CRIM. PROC. ANN. art. 11.071 (Vernon's Supp. 2000), files this application for writ of habeas corpus and in support thereof, would show the Court as follows:

Applicant believes that an evidentiary hearing is necessary to adequately prove his allegations herein, and respectfully requests the Court to order the same.

I. STATEMENT OF JURISDICTION

Applicant is illegally restrained in his liberty by the Director of the Institutional Division of the Texas Department of Criminal Justice, pursuant to a sentence of death entered by the 180th Judicial District Court of Harris County in Cause no. 864,928. A copy of the judgment & sentence is attached hereto as Exhibit "A". (CR, 191,192)

II. CLAIMS FOR RELIEF

<u>ISSUE</u>	<u>PAGE</u>
CLAIM FOR RELIEF NUMBER ONE	29
THE REMOVAL OF ATTORNEY WAYNE HILL, WITHOUT NOTICE OR A HEARING, AS HIS ATTORNEY AFTER TWO YEARS OF AN EXISTING ATTORNEY CLIENT RELATIONSHIP VIOLATED HIS U.S. CONST. AMEND. VI	

RIGHT TO COUNSEL AND HIS U.S. AMEND. V & XIV RIGHT TO DUE PROCESS.

CLAIM FOR RELIEF NUMBER TWO 33

APPLICANT WAS DENIED THE RIGHT TO COUNSEL AS GUARANTEED BY U.S. CONST. AMEND. VI BY THE TRIAL COURT'S REFUSAL TO APPOINT TWO ATTORNEY'S TO REPRESENT HIM AS REQUIRED BY ART. 26.052(e) V.A. C.C.P.

CLAIM FOR RELIEF NUMBER THREE 33

APPLICANT WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V AND XIV BY THE TRIAL COURT'S REFUSAL TO FOLLOW STATE LAW AND APPOINT TWO ATTORNEY'S TO REPRESENT HIM IN ACCORDANCE WITH ART. 26.052 (e) V.A.C.C.P.

CLAIM FOR RELIEF NUMBER FOUR 39

APPLICANT'S RIGHT TO DUE PROCESS AS GUARANTEED BY U.S. CONST. AMEND. V & XIV WAS VIOLATED BY THE PROSECUTORIAL VINDICTIVENESS IN THIS CASE BY PROCEEDING WITH A TRIAL FOR DEATH BECAUSE APPLICANT REFUSED TO PLEA BARGAIN TO A MURDER CHARGE.

CLAIM FOR RELIEF NUMBER FIVE 40

APPLICANT WAS DENIED HIS RIGHT TO EFFECTIVE REPRESENTATION BY COUNSEL AS GUARANTEED BY U.S. CONST. AMEND. VI, BY COUNSEL FAILING TO RAISE PRE-TRIAL THE ISSUE OF PROSECUTORIAL VINDICTIVENESS AND HAVE A RULING ON THE SAME BY THE TRIAL COURT.

CLAIM FOR RELIEF NUMBER SIX 42

APPLICANT'S U.S. CONST. AMEND. VI RIGHT TO A SPEEDY TRIAL WAS VIOLATED WHEN ALMOST THREE YEARS PASSED BETWEEN HIS BEING CHARGED IN THIS CASE AND ACTUALLY PUT TO TRIAL, EVEN THOUGH HE MADE REPEATED REQUESTS FOR A SPEEDY TRIAL.

CLAIM FOR RELIEF NUMBER SEVEN 54

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

CLAIM FOR RELIEF NUMBER EIGHT 57

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

CLAIM FOR RELIEF NUMBER NINE 58

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

CLAIM FOR RELIEF NUMBER TEN 63

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

CLAIM FOR RELIEF NUMBER ELEVEN 67

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

CLAIM FOR RELIEF NUMBER TWELVE 69

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

CLAIM FOR RELIEF NUMBER THIRTEEN 73

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

CLAIM FOR RELIEF NUMBER FOURTEEN 77

APPLICANT WAS DENIED DUE PROCESS OF LAW (THE ABILITY TO PRESENT A DEFENSE) AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY REFUSING TO ALLOW THE DEFENSE TO REBUT THE FALSE IMPRESSION OF JACK SHADBOLT SHOWN BY THE STATE.

CLAIM FOR RELIEF NUMBER FIFTEEN 80

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO FULLY INVESTIGATE AND PRESENT EVIDENCE TO REBUT THE ALLEGED CONFESSION TO TAMARA LLAMAS.

CLAIM FOR RELIEF NUMBER SIXTEEN 84

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO

OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY..

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APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY..

CLAIM FOR RELIEF NUMBER EIGHTEEN 90

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND. VI AND THE RIGHT TO DUE PROCESS AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY THE CONFLICT CAUSED BETWEEN COUNSEL'S CONTINUED LIVELIHOOD VERSUS THE INTERESTS OF APPLICANT.

CLAIM FOR RELIEF NUMBER NINETEEN 95

APPLICANT WAS DEPRIVED OF HIS CONST. AMEND. VI RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL BY COUNSEL FAILING TO OBJECT TO THOSE MATTERS SET FORTH IN THIS WRIT AS AN INSTANCE OF TRIAL COUNSEL BEING INEFFECTIVE.

CLAIM FOR RELIEF NUMBER TWENTY 95

APPLICANT WAS DEPRIVED OF HIS CONST. AMEND. VI RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL BY THE CUMULATIVE

**EFFECT OF THE INSTANCES OF INEFFECTIVE ASSISTANCE SET FORTH
HEREIN AS INDIVIDUAL CLAIMS FOR RELIEF.**

CLAIM FOR RELIEF NUMBER TWENTY-ONE 97

**APPLICANT WAS DEPRIVED OF HIS U.S. CONST. AMEND. V & XIV
RIGHT TO DUE PROCESS AND THE RIGHT TO PRESENT A DEFENSE WHEN
THE STATE BLOCKED HIS ABILITY TO HAVE ACCESS TO THE PHYSICAL
EVIDENCE TO TEST AND RETEST FOR DNA.**

CLAIM FOR RELIEF NUMBER TWENTY-TWO. 97

**APPLICANT WAS DEPRIVED OF HIS RIGHT TO HAVE POST
CONVICTION TESTING OF THE BIOLOGICAL EVIDENCE IN THIS CASE
PURSUANT TO ART. 64.03 V.A.C.C.P.**

CLAIM FOR RELIEF NUMBER TWENTY-THREE . . . 97

**APPLICANT WAS DEPRIVED OF HIS STATE CONSTITUTIONAL RIGHT
TO DUE PROCESS AND RIGHT TO PRESENT A DEFENSE BY DENYING HIM
ACCESS TO THE BIOLOGICAL EVIDENCE BEING MAINTAINED BY THE
STATE FOR THIS WRIT OF HABEAS CORPUS.**

CLAIM FOR RELIEF NUMBER TWENTY-FOUR 101

APPLICANT WAS DENIED HIS U.S. CONST. AMEND. VI & XIV

RIGHT TO DUE PROCESS AND A FAIR JURY TRIAL BY THE PERJURED TESTIMONY OF STATE'S WITNESS TAMARA LLAMAS.

CLAIM FOR RELIEF NUMBER TWENTY-FIVE 101

APPLICANT WAS DENIED HIS U.S. CONST. AMEND VI & XIV RIGHT TO FAIR JURY TRIAL BY THE STATE'S FAILURE TO DISCLOSE THE REASON WHY TAMARA LLAMAS WOULD TESTIFY AS SHE DID AT THE TRIAL, NAMELY, THAT HE HUSBAND WOULD BE TRANSFERRED FROM LOUISIANA FEDERAL CORRECTIONAL FACILITY TO A FEDERAL CORRECTIONAL FACILITY IN FT. WORTH, TEXAS.

CLAIM FOR RELIEF NUMBER TWENTY-SIX 107

APPLICANT WAS DEPRIVED OF HIS U.S. CONST. AMEND. VI, RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY COUNSEL'S FAILURE TO FULLY INVESTIGATE HIS MENTAL STATUS AND PRESENT THE SAME TO THE JURY AT TRIAL.

CLAIM FOR RELIEF NUMBER TWENTY-SEVEN 108

APPLICANT WAS DEPRIVED OF HIS U.S. CONST. AMEND. VI, RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, BY COUNSEL'S FAILURE TO FOLLOW THE EXPERT ADVICE OF THEIR MITIGATION SPECIALIST GINA VITALE AND HAVE APPLICANT EXAMINED BY A NEURO PSYCHOLOGIST.

CLAIM FOR RELIEF NUMBER TWENTY-EIGHT 108

APPLICANT'S SENTENCE OF DEATH VIOLATES THE U.S. CONST. AMEND VIII, & XIV IN THAT APPLICANT'S SENTENCE OF DEATH WAS RETURNED WITHOUT THE JURY HAVING A FAIR UNDERSTANDING OF APPLICANT'S BACKGROUND AND MENTAL CONDITION.

CLAIM FOR RELIEF NUMBER TWENTY-NINE ... 111

APPLICANT WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV, AND HIS SENTENCE OF DEATH VIOLATED THE CRUEL AND UNUSUAL PUNISHMENT PROVISIONS OF U.S. CONST. AMEND VIII, BY THE STATE COURT ALLOWING HIM TO BE SENTENCED TO DEATH WHEN THE EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUPPORT HIS CONVICTION FOR CAPITAL MURDER WHERE THE STATE FAILED TO PROVE THAT APPLICANT HAD ATTEMPTED TO COMMIT OR HAD COMMITTED SEXUAL ASSAULT OF THE COMPLAINANT, AS ALLEGED IN THE INDICTMENT.

CLAIM FOR RELIEF NUMBER THIRTY 112

APPLICANT WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV, AND HIS SENTENCE OF DEATH VIOLATED THE CRUEL AND UNUSUAL PUNISHMENT PROVISIONS OF U.S. CONST. AMEND VIII, BY THE STATE COURT ALLOWING HIM TO BE SENTENCED TO

DEATH WHEN THE EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUPPORT HIS CONVICTION FOR CAPITAL MURDER WHERE THE STATE FAILED TO PROVE THAT APPLICANT HAD INTENDED TO CAUSE THE DEATH OF THE COMPLAINANT AND CAUSED THE DEATH OF THE COMPLAINANT BY STABBING THE COMPLAINANT WITH A KNIFE, AS ALLEGED IN THE INDICTMENT.

CLAIM FOR RELIEF NUMBER THIRTY-ONE 112

APPLICANT WAS DENIED DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV, AND HIS SENTENCE OF DEATH VIOLATED THE CRUEL AND UNUSUAL PUNISHMENT PROVISIONS OF U.S. CONST. AMEND VIII, BY THE STATE COURT ALLOWING HIM TO BE SENTENCED TO DEATH WHEN THE EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUPPORT HIS CONVICTION FOR CAPITAL MURDER WHERE THE STATE FAILED TO PROVE THAT THE COMPLAINANT WAS KILLED BY APPLICANT DURING THE COURSE OF A SEXUAL ASSAULT OR ATTEMPTED SEXUAL ASSAULT, AS ALLEGED IN THE INDICTMENT.

CLAIM FOR RELIEF NUMBER THIRTY-TWO 138

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR IN DENYING APPLICANT'S INVOCATION OF THE SPOUSAL COMMUNICATION PRIVILEGE (Tex. R. Evid. 504) AND PERMITTING APPLICANT'S EX-WIFE TO

REPEAT APPLICANT'S REBUKE OF HER DURING THE COURSE OF THEIR MARRIAGE, VIA HIS USE OF DEROGATORY NAMES AND TERMS FOR HER. U.S. CONST. AMEND. IV, V, XIV.

CLAIM FOR RELIEF NUMBER THIRTY-THREE... 139

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR IN DENYING APPLICANT'S INVOCATION OF THE SPOUSAL COMMUNICATION PRIVILEGE (Tex. R. Evid. 504) AND PERMITTING APPLICANT'S EX-WIFE TO REPEAT APPLICANT'S PRIVILEGED STATEMENTS REGARDING HIS THOUGHTS AND FEELINGS TOWARD THE COMPLAINANT. U.S. CONST. AMEND. IV, V, XIV.

CLAIM FOR RELIEF NUMBER THIRTY-FOUR... 139

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR IN DENYING APPLICANT'S INVOCATION OF THE SPOUSAL COMMUNICATION PRIVILEGE (Tex. R. Evid. 504) AND PERMITTING APPLICANT'S EX-WIFE TO REPEAT APPLICANT'S PRIVILEGED STATEMENTS REGARDING HIS WHEREABOUTS AND ACTIVITIES ON THE NIGHT OF COMPLAINANT'S DEATH. U.S. CONST. AMEND. IV, V, XIV.

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THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY

NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER FULL CRIMINAL HISTORY, AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

CLAIM FOR RELIEF NUMBER THIRTY-SIX 145

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF EMPLOYING JUVENILES IN INTERSTATE TRAFFICKING AND DISTRIBUTION OF MARIJUANA AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

CLAIM FOR RELIEF NUMBER THIRTY-SEVEN. . . 146

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF EMPLOYING MINORS TO TRANSPORT WEAPONS ACROSS STATE LINES IN FURTHERANCE OF HER CRIMINAL ACTIVITIES, AS IT AFFECTED HER

CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

CLAIM FOR RELIEF NUMBER THIRTY-EIGHT . . . 146

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF MAKING FALSE CRIMINAL ACCUSATIONS AGAINST OTHERS, AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

CLAIM FOR RELIEF NUMBER THIRTY-NINE 146

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF HIRING OTHERS TO KILL WITNESSES AGAINST HER IN PENDING CRIMINAL PROSECUTIONS, AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

CLAIM FOR RELIEF NUMBER FORTY. 158

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