

It is also important to note that as pointed out by Applicant in one of his letters to the clerk (CR, 120) , that it wasn't until after Mr. Hill's departure that the State decided to seek the death penalty. As pointed out by Applicant, Art. 26.052(e) V.A.C.C.P. states that in a capital case that the Judge shall appoint two attorneys to represent the indigent defendant as soon as practical after charges are filed unless the State gives notice in writing that the death penalty will not be sought. See Exhibits "C" & "D". For two years Applicant only had one attorney. For this two year period there was no seeking of the death penalty. Kelly Siegler, the lead prosecutor, pointed out how great a lawyer Mr. Hill was, and it was not until he was gone that she decided to seek death in this case. Applicant suffered great prejudice by the Court allowing Mr. Hill to sever the attorney/client relationship without notice or a hearing.

CLAIM FOR RELIEF NUMBER TWO

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

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.

The United States Supreme Court recognized in **Barker v. Wingo**, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), that a defendant can suffer prejudice in many ways. As stated in that case prejudice can be occasioned by oppressive pretrial incarceration, a delay can cause anxiety and concern by the accused, and the defense may be impaired. There is no doubt that all of the correspondence between Applicant and the Court found in the Court's file shows that he was suffering anxiety and concern because he was just sitting in jail and he did not understand what, if anything, was being done on his case..

Examples of this appear as follows:

"...I know since I'm an indigent defendant my fate is not as important as some one that pays you, but my sanity is important to me and all this time you've left me in the dark is very nerve racking and hard on my mind. I know that this does not matter to you, because you continue to do this to me." (CR, 35)

"...I'm not trying to tell you how to do your job, but for my sanity will you please come over or notify me in some way this week and tell me what's going on in my case. That would be the week of Nov. 11, 2002. This is my 3rd attempt to try to find out something in a month. I'll write the judge and see if she will help me. I know I have to be the oldest case on the 180th docket. How can yall keep resetting me. Do yall plan on resetting me forever. After we go to court on Dec. 4, 2002, Do not reset me again. I'm ready to go to trial." (CR, 31)

"...Your Honor I 'm so distraught and anxious that words cannot describe as you can imagine after being in jail for 22 months with no bond and left with no contact with my lawyer.." (CR, 29)

" So who does care about my Constitutional Rights, apparently not my so called lawyers. They do not care if I get so depressed that I do not eat or that the walls close in on me. They don't care that some nights I feel as if I'm having a nervous breakdown, they only want a plea bargain." (CR, 46)

The only threatening with the death penalty that was going on , before Mr. Hill departed the case, was between Mr. Hill and Applicant.

" You have threatened me with the death penalty 2 times or take some kind of plea bargain." (CR, 35)

State law required that the Court appoint two attorneys to represent Applicant as soon as practical after charges were filed. The trial Court did not do this even though the Court received notice after notice from Applicant that he was suffering from a lack of contact with his attorney. One of the reasons for having two attorneys is so that there is twice the opportunity for contact with the accused. By an utter disregard for the dictates of Art. 26.052(e) V.A.C.C.P. the Court had a hand in causing the relationship problems between Mr. Hill and Applicant that the State and the Court was aware of this problem. Then allowing Mr. Hill to summarily dump Applicant, without notice or a hearing, and leave him without counsel after two years of representing him caused him great prejudice and eventually lead

to his receiving the death penalty.

Any objective reading of volume two of the Reporter's Record will show that the *Faretta v. California*, 422 U.S. 806 (1975) hearing was not a hearing to determine if Applicant really understood the perils of self-representation. It was a hearing to get him to sign the waiver of counsel form. At the time of the hearing Mr. Hill had been allowed to depart Applicant's attorney/client relationship without notice or a hearing to Applicant. Then he was appointed the services of Kurt Wentz and it appeared to him that the same thing was happening. At this hearing it was clear that Applicant did not know or believe that he was facing the death penalty. He thought that because the law stated what it states in Art. 26.052(e) V.A.C.C.P. that he was not facing death as a possible punishment. That was only made clear to him at this hearing. Was it so wrong for Applicant to rely upon the law? When the Judge told him about the possible sentence of death she then said.

By the Court: "You still want to represent yourself?"

By Mr. Irvan: Well, unless I can get some different adequate representation."(RR2, 5)

so the Court then inquired into what it was that Mr. Wentz had not done for him.

By the Court: "What has he not done for you , sir, that you want him to do?"

By Mr. Irvan: He hasn't done anything so far, Your Honor." (RR2, 5)

Then, without asking Mr. Wentz anything about what Mr. Irvan had said, and without assuring Mr. Irvan that the Court would follow the law and appoint another attorney to assist him in this death seeking capital case, that he just found out was a death case, the Court

sought out his waiver of counsel.

This hearing set forth in volume two is not an objective hearing wherein the Court really explains the dangers of self-representation and where the Court explains to the indigent defendant that asserting his right to counsel means that he would get two attorneys. Why should he have thought that two attorneys would be forthcoming. Now, he has sat in jail for some two years without two attorneys being appointed. He knew that Mr. Hill would threaten him with death if he wouldn't plea bargain, but as he stated in his letter, he believed that the State was not seeking death. That belief was bolstered by the Court NOT appointing a second attorney per Art. 26.052(e) V.A.C.C.P.. Then, when this belief came to light, and Applicant specifically rebutted the Court's assertion that the State was seeking the death penalty with the fact that she had not appointed a second attorney. The Court did nothing to explain why she had not appointed another attorney. Nor, did she explain that she would appoint another attorney. She only asked Applicant what counsel should have done. And Applicant had already told her that he had been sitting in jail for some two years and not even a motion had been filed in his case. The Clerk's Record in this case backs up the fact that Applicant was telling the truth when he made that statement. At this point it is obvious that the Court wanted Applicant to go pro-se. A total reading of Record Volume Two (RR2) shows that this hearing was for the purpose of securing his going pro-se. It was not a hearing to make sure that he understood his rights, and all of the pitfalls of going pro-se. It was a hearing that would justify the Court's already having severed the attorney/client relationship with Mr.

Wayne Hill without notice or a hearing to Applicant. If it made it look like it was Applicant's fault, then there would be no prejudice to the wrongful removal of Mr. Hill.

Later in the hearing the Court told Applicant:

By the Court: "All right. You realize that you have a right to a (emphasis added) court appointed lawyer." (RR2, 8) The Court intentionally never informed Applicant that a second lawyer would be appointed.

At the end of her discussion with Applicant, she stated:

By the Court: So you are telling me you are waiving your right to effective representation?

Which is what you are doing if you end up representing yourself.

By Mr. Irvan: Your Honor. I have not been represented at all.

By the Court: I need you to listen to my question." (RR2, 10)

By the removal of Mr. Hill without notice or a hearing to Applicant, and by intentionally not informing Applicant that he would be appointed a second attorney to assist him per Art. 26.052(e) V.A.C.C.P. the Court effectively left Applicant with no choice but to represent himself. This entire discussion began with Applicant stating that nothing had been done on his case in two years, and "obviously something has to be done" (RR2, 3) There never was any assurance from the Court that he would be effectively represented. This hearing was nothing but a sham to rectify the wrongful removal of Mr. Hill.

By removing Mr. Hill without notice or a hearing to Applicant. By refusing to give him any assurance that he would be effectively represented by two attorneys at trial because

the law assured him of that right. The Court coerced the waiver of any attorney from Mr. Irvan. This was a way for the Court to erase the last two years that he had been sitting in jail without any assurances that anything was being done on his case. Ultimately, in this writ it will be shown that Applicant had a viable defense to these charges, but that was never explored pre-trial. Even though he had told Mr. Hill years before that he had a consensual sexual relationship with the deceased at the time of her death that would explain why his DNA was present. That was never an option that was sought out by his attorneys. His anxiety, his frustration, his potential nervous breakdown that he was screaming out to the court with in his letters was very real to him. The Court responded by taking Mr. Hill away from him without ever giving an explanation of any kind whatsoever. She then responded to his plea that Mr. Wentz was not doing anything either, and that he needed somebody to represent him, with prodding him to sign the waiver of counsel form. The Court denied Applicant his U.S. CONST. AMEND. VI right to counsel and thereby deprived him of due process of law as guaranteed by U.S. CONST. AMEND. V & XIV. Basic Due Process requires notice and a hearing before an important and valuable right can be taken from an indigent defendant. These two years leading up to his trial was a critical time when he needed someone to explore and discover his defense, and any mitigation that would be present for his trial. Applicant was deprived of this in part, by these actions of the trial judge.

CLAIM FOR RELIEF NUMBER FOUR

APPLICANT'S RIGHT TO DUE PROCESS AS GUARANTEED BY U.S. CONST.