

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

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.

As set forth in the above quotes from the record this case pended for over two years without the Court complying with the dictates of Art. 26.052(e) V.A.C.C.P. It is the usual Harris County District Court policy that as long as DEATH is not being sought only one attorney will be appointed in a capital case.⁵ Such is the policy in Harris County, Texas even though the literal wording of Art. 26.052(e) V.A.C.C.P. would require the State to serve written notice of an intent not to seek death. This was the case herein. As evidenced by Applicant's letters to the Judge, and by his statements to the Judge at the *Faretta, supra* hearing. He believed that the State was not seeking the death penalty. It was not until he decided to go pro-se that he was notified that the State was seeking death in his case. Even

⁵See affidavits of certified capital murder trial attorney's in Harris County Texas, which are attached hereto as exhibit "C" & "D".

then the Court joined in on the prosecutorial vindictiveness by prodding Applicant to waive counsel by refusing to clarify to him that a second counsel would be appointed. now that the State was seeking death.

In the case of **United States v. Goodwin**, 457 U.S. 368, 102 S.Ct. 2485, 73 L.Ed.2d 74 (1982) the Supreme Court Stated:

“To punish a person because he has done what the law plainly allows him to do is a due process violation ‘of the most basic sort’ **Bordenkircher v. Hayes**, 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (19) ...The Court has recognized this basic - - and itself uncontroversial principle. For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right.”

Applicant raised this issue in his letter of April 15, 2003, wherein he stated.

“...The Court stated on February 21, 2003, the State is seeking the death penalty. Mr. Hill told me that the State was not, that was why only 1 attorney was appointed. C.C.P. Art. 26.052(e) states 2 attorneys shall be appointed as soon as practicable. Only after 2 years and when I went Pro- Se did the State seek the death penalty.⁶ This seems to me very prejudice. Is the Court and the

⁶This letter was generated because at the February 21, 2003, hearing on Mr. Wentz's motion to withdraw which Applicant did receive notice of and a hearing, the following occurred. By the Court: “Okay, So, you feel like that is why you want to represent yourself, because your lawyer has not filed any motions on your behalf? By Mr. Ivan: No, ma'am. I want to represent myself because obviously no one else is. By the Court: That's not true, sir. I disagree with you on that point. But my question is, you