

Affidavit

I, Roy E. Greenwood, Attorney at Law, after being duly deposed and sworn, do state under oath as follows:

I am an attorney licensed in the State of Texas, in good standing, State Bar No. 08411000, having been licensed to practice Law in September, 1970. Throughout my career, I have specialized in the field of criminal law, and for the last twenty years, 100 % of my practice has been involved in representing citizens against criminal charges, both at trial, on appeal, or in habeas corpus litigation. For the last 15 years, I've concentrated in capital habeas corpus and appeal litigation. A copy of my *Curriculum Vitae* is attached hereto giving further details of my background and experience.

I have been contacted by Houston attorney Mike Charlton to provide an affidavit concerning knowledge I may have about one of his clients, Farley Matchett, who was convicted in Houston and assessed the death penalty. I have a substantial amount of background information concerning Mr. Matchett's cases, in as much as I represented him in Walker County, Texas, with regard to certain felony charges against him, including a charge of capital murder.

Mr. Charlton has asked that I provide an affidavit with regard to any information and opinion that I may have concerning the representation that Mr. Matchett had in his Harris County trial, wherein he received the death penalty, as I had advised Mr. Charlton and other attorneys, for many years, that I thought that Farley's representation in Houston constituted ineffective assistance of counsel, and that counsel's decision to enter a plea of guilty to those Harris County capital murder charges was a serious mistake, under the facts and circumstances of his case.

After being asked to provide this affidavit, I wanted to review my files about Farley's Walker County cases, but according to my files, Austin attorney David Botsford asked for my files in Farley's case in March, 1999, and on March 25, 1999, I delivered the entirety of my files to Mr. Botsford. I contacted Mr. Botsford on November 20, 2001, and was advised that all of my files concerning this case had been left with the law firm that Mr. Botsford was in at that time, *Sheinfeld, Maley And Kay* in Houston, and the files were not immediately available to Mr. Botsford for return to me. Thereafter, I have made several attempts to obtain the files and records from Mr. Botsford's old law firm, but have not received such records as of the date I was required to complete this affidavit. Thus, on December 5, 2001, I went to the Court of Criminal Appeals, checked out all of Mr. Matchett's records at that court, including his habeas and direct appeal records, and conducted a lengthy review of those records in order to refresh my recollection as to this matter.

Based upon my recollection, a review of the remaining documents in my files, and the Court of Criminal Appeals files, I believe that I have sufficient information in which to give this opinion for the purposes of future litigation in this case, challenging the validity of the Harris County conviction rendered against Mr. Matchett.

Because of the complexity of setting out my opinions, and the basis therefore, I would like to first of all provide background information concerning the Walker County prosecution, my dealings with Donald Davis, the attorney appointed to represent Farley in Houston, and then the facts and circumstances concerning my opinion that counsel's decision to enter a plea of guilty on Farley's behalf in Houston was clearly erroneous. With this introduction in mind, I will now categorize the background for my opinion:

I. The Walker County Cases

A. The Charges

On August 5, 1991, I was appointed by the Presiding Judge of the 278th District Court of Walker County to represent Mr. Matchett with regard to two charges that had been filed against him, i.e., an aggravated assault of an elderly person and a charge of Capital Murder for a murder committed during the course of an alleged burglary. My investigation immediately commenced and I determined that the Walker County evidence was based exclusively on the following evidence obtained by the State, to wit:

1. Members of the Huntsville Texas Police Department had searched Mr. Matchett's place of residence, without a search warrant and without his consent, while he was not present, and had seized a number of items of evidence that had been stolen from the victim of the capital murder charge mentioned above. As result of the finding of this recently stolen property, Huntsville police then went to Judge Baker, County Court Law Judge in Huntsville, to secure an arrest warrant for Mr. Matchett.
2. This arrest warrant was issued and according to the information in the District Attorney's files, law enforcement officers in Houston, Harris County, Texas arrested Mr. Matchett based upon this Walker County arrest warrant in Houston.
3. After Mr. Matchett's arrest in Houston, he gave a written confession, in which he admitted to both the Walker County aggravated assault charge, the Walker County capital murder, and another murder occurring in Houston of Mr. Matchett's uncle. It was this capital murder charge in Houston for which Mr. Matchett eventually received the death penalty in this case.
4. Thus, the Walker County cases were based upon evidence concerning the original search of his residence and upon the confession obtained in Houston.

B. The Walker County Defense

Because the Walker County cases were inevitably linked to the Harris County prosecution, I feel that it is appropriate to outline some of the information discovered

during my investigation of the Walker County cases, as that information received could have, and should have, been relevant to the defense of the Harris County case.

1. Legal Issues

Because the state's main evidence against Mr. Matchett involved issues concerning the Fourth Amendment, i.e. the search of his home, and the execution of the arrest warrant, which resulted in Mr. Matchett's giving a confession, implicating 5th and Sixth Amendment Issues, an exhaustive quantity of legal research was put into the facts and the law of these issues. A review of the District Attorney's files, the application for the arrest warrant and the warrant, and other information received, reflected that there were serious problems with the manner and method of performing this search and obtaining this confession.

The defense concluded that if the entry into Mr. Matchett to residence was illegal, that such evidence must be excluded, and that even more importantly, because such evidence was used as the basis for the arrest warrant, upon which Mr. Matchett was arrested in Houston, that the illegal search and seizure would thus taint his arrest in Houston, which would thus render the confession in Houston inadmissible under the test set out in Dunnaway vs. New York, if the arrest made in Houston was based upon the Walker County arrest warrant.

Thus, pretrial motions were filed in Walker County challenging the search of the residence and the confession from Houston, based upon several grounds, including the fact that such confession was secured by an illegal arrest. At least three separate pretrial hearings were conducted on these issues by the trial court.

2. Factual Issues

There were no eyewitnesses to the Walker County capital case nor any forensic evidence linking Farley to this crime. There was no accomplice witness involved. Thus, with regard to the issue of guilt and innocence in the Walker County case, there was no independent evidence other than the Harris County confession and the search. As to the aggravated assault of the elderly person in Walker County, other than the Harris County confession, there was no other evidence at all to link Farley to that crime.

3. Punishment Mitigation Issues

Farley's prior criminal record included a number of arrests, mostly for misdemeanor offenses, including a number of theft offenses and the possession and use of drugs. Several years prior to this offense, Farley got hooked on "crack cocaine", and was charged with a number of misdemeanor theft offenses and was placed on probation for several of them. Even after he was on probation, he was charged with other minor theft offenses, and those charges were pending for many months prior to the capital murder case occurring in Walker County. For some reason or the other, even though there were a number of arrest warrants out for Farley, the police did not execute those warrant and place him in jail on these misdemeanor charges and on the probation revocation warrants, even though the local police clearly knew that Farley was in town and where he lived. During one of these misdemeanor arrests,

the police officer who executed the arrest warrant for Farley, claimed that Farley had assaulted him (Officer Hurst), but no felony assault charge was ever filed against Farley at that time.

My co- counsel and I talked to over a dozen people who had known Farley for years, including one of his athletic coaches at Madisonville High School, and all of them liked Farley, and were very shocked that he had been charged in this capital murder crime. Almost all of these witnesses indicated that they would testify as character witnesses for Farley. All of Farley's family members indicated that they would testify for him, in order to show that his crack cocaine addiction was what had caused his criminal problems. So, I had lined up a number of mitigation witnesses for him. Further, the County Court Judge who had issued the arrest warrant testified in the pretrial hearing that she had known Farley for years and was also shocked that he was a suspect in this crime. She indicated that he was basically a nonviolent person, and that his drug problems had obviously resulted in this violent conduct. Such testimony was completely unexpected by the defense, but I noted at the time that the judge would be one of the primary character witnesses on Farley's behalf if this case went to trial.

In considering Farley's confession, with regard to the Walker County case, the crime made no sense. Farley indicated that he was high on crack cocaine for that entire time during which that murder was committed, and his memory of that offense indicated a complete lack of understanding on his part as to why he would assault the victim, who he had known for years, and liked, and who had helped him over the years with monetary support. He could give no explanation as to why he would assault that victim, or the other victim of the aggravated assault.

Thus, since I had some personal information from my law practice experiences with crack cocaine, I started an intensive study of that drug, and determined that use of crack cocaine was completely different from almost any other drug utilized. Basically, as to some persons, it made them completely insane, and caused them to commit violent acts for no purpose.

I talked to a number of crack cocaine users who confirmed this unusual effect, and then talked to Dr. Carlton Erickson, the head of the University of Texas Pharmacy School, who had done a substantial amount of research on crack cocaine abuse. Dr. Erickson had done a number of studies on crack cocaine, many more than most experts in the pharmacy field, because such drug had only become recently known to the scientific community. I retained Dr. Erickson to be an expert for the defense in this case, as he provided substantial information that was unknown to the general public about the effects of crack cocaine, which could have mitigated Farley's actions in this case, if he was convicted.

I further talked Thomas "Hollywood" Henderson, the ex Dallas Cowboy football star, who had basically ruined his athletic career by the use of crack cocaine. Mr. Henderson provided me with an overall view of crack cocaine use, comporting with our defensive theory of mitigation for Farley. While I wished to use Mr. Henderson as a witness for Farley, if his case went to trial, no final decision was ever made by Mr. Henderson as to whether he would testify for us. I also had lined up contacts with other ex professional athletes who had experience with crack cocaine, and was

planning on calling them to determine if they would testify in our case, if the case went to trial.

A key factor in our investigation was that the confession given in Houston indicated that Farley was under the influence of crack cocaine at the time that he committed those offenses, and further, the confession indicated that the murder of his uncle, in Houston, was provoked, and may have even been in self-defense by Farley at the time he committed that murder. In our review, then, the Houston case was defensible on self-defense or provocation grounds, and did not show that it was an absolute capital murder prosecution. While the state did indict Farley later for capital murder in Houston, for the murder while in the commission of a robbery, the confession indicated, in our view, that the theft of any property from the uncle occurred after the murder, and thus Farley was not subject, assuming the jury believed our theory, to the capital murder charge.

So, the Walker County case had a number of key legal issues that could have been successful at trial, and even if not, such Issues could have been preserved for appeal purposes. Thus because of the number of persons who knew and liked Farley and would testify as character witnesses for him, and could confirm his crack cocaine usage, I believed that it was possible to make a serious defense to the Walker County cases, because, with the evidence from Dr. Erickson, I believed that it was also possible that we could have shown that Farley was legally insane, because of these use of crack cocaine, at the time of his commission of these offenses. Under Texas law, while the mere use of alcohol or drugs will not excuse conduct, should it unexpectedly render a persons unable to understand the difference between right and wrong, a possible claim of insanity could be raised, certainly as a punishment issue in the case.

After I concluded all of the investigation concerning crack cocaine use, my plan was to engage the services of a psychiatrist and or psychologist to see if an insanity defense could be presented based upon the use of crack cocaine. However, because of the investigation results on the legal issues, I never got to engage the services of a mental-health expert.

C. The Results

THE CONFESSION -During the pretrial hearings, we initially established, during testimony by the Houston homicide officers who took Mr. Matchett's confession, that he was arrested solely upon the arrest warrant issued in Walker County, with the testimony and other files and records of the District Attorney showing no other basis for the Houston arrest.

THE SEARCH- In a hearing dealing with the entry into Mr. Matchett's residence, we established that the officers could not have gained valid consent for the entry into such premises by the owner of the property, a local minister, who was allowing Farley to live in the residence rent free. The police initially attempted to justify entry into the premises based upon this consent.

Then, the State attempted to justify entry, without a warrant, based upon a claim of “hot pursuit” of a suspect. However, since the police had no justification for believing that the suspect was at the premises at the time, not having been seen there for several days, that theory was also rejected.

Then, the State attempted to justify the entry into the premises on “emergency or community caretaking” grounds, with one police officer, Officer Hurst, claiming that they did not know Farley lived at the premises, but indicating that the potential suspect had been seen going into the premises earlier, thus believing that who ever lived there may also have been in danger of being assaulted. That state’s theory would have justified entry into the premises based upon a claim by the officers that they were trying to determine if anyone else had been injured at the residence, since the suspect had been seen there before.

However, this police officer testified that he had no information that Farley was a suspect, that he did not know Farley, did not know where Farley lived, and was thus making his entry into the premises based upon the exigent facts needed to determine if anyone was injured there. Upon this officer’s entry, he searched cabinets, drawers in tables, in closets, and in making this full search of all places, located the stolen property. It was clear that his search of the premises was not merely looking for injured persons, but was searching for physical evidence.

Then, another police officer, the partner of Officer Hurst, who served as the arrest warrant Affiant, testified and clearly impeached his partner’s testimony about the information given for the basis of the search. This police officer testified that both he and his partner, Officer Hurst, did in fact to know Farley, as they had arrested him on minor misdemeanor charges previously, and that on one occasion Farley had assaulted Hurst during the arrest. This officer testified that they knew Farley and knew where he lived, i.e. in this house, and further knew that, based upon their investigation Farley was a suspect in these Walker County crimes.

This testimony by this officer clearly impeached the testimony of the primary officer who conducted the search, as outlined above, and further, this testimony indicated that Hurst’s testimony included a number of false claims concerning the “community caretaker exception” and was probably perjured. During that this hearing, Donald Davis, Mr. Matchett’s Houston lead counsel, was present and listened to the testimony from these two officers.

Judge Jerry Sandel, Presiding Judge of the Court, after listening to this testimony, immediately admonished the District Attorney that he believed that perjury had been committed. Judge Sandel was very upset at this development, and indicated that such perjured testimony by the officers was a serious blow to the state’s case. Thereafter, the case was recessed until the following morning.

At the following pretrial hearing, the defense called Judge Baker, who issued the arrest warrant for Farley, and during this hearing, the Judge testified that if the officer committed perjury in his justification for entry into the premises, as was apparent by the prior testimony of the officers and the opinion of the trial court, that such perjured testimony would have tainted the issuance of the arrest warrant. The Judge related that the arrest warrant was based exclusively upon the original testifying officer’s

affidavit claiming that the search was issued with consent, in a hot pursuit situation, and in an emergency situation.

Since these theories for entry into the residence had been impeached, the Judge was asked whether such perjured testimony, if excluded from the information provided to her in issuing the arrest warrant, would have still justified the issuance of the warrant. The Judge indicated that under no circumstances would she have issued this arrest warrant had she known about this false testimony of the police officer applying for the warrant.

Conclusion:

Based upon these revelations in the pretrial, Walker County District Attorney David Weeks recognized that his capital murder case was weak, inasmuch as all the evidence upon which the state would have had, the search and the confession, had been rendered highly questionable based upon statements made by the trial court. During a lunch hour after last pre-trial testimony, District Attorney Weeks advised the defense and the Court that, for the first time, he was willing to agree to a plea bargain arrangement whereby Mr. Matchett would receive a life sentence on the capital murder case. Prior to that time, Mr. Weeks had rejected all plea offers by the defense.

II. Parallel Harris County investigation

However, even though it appeared that there was a possibility of working out a deal in Walker County, a charge of capital murder was still pending against Mr. Matchett in Houston, and the District Attorney in Houston had not yet made a decision as to whether the state would seek the death penalty. So, we attempted to make efforts to convince the District Attorney in Houston that they should also allow Mr. Matchett to dispose of that case also, to prevent his exposure to the death penalty.

Numerous efforts were made by myself, by telephone call and letter, to the Harris County District Attorney attempting to talk with someone in authority about working out a deal. After about 6-9 attempts to deal with them on my part, I decided that they would not deal with me, and thus attempted to get Donald Davis, Mr. Matchett's lead Houston counsel, to take over that effort. However, as will be explained below, Mr. Davis never returned any of my telephone calls or attempts to communicate.

Because we believed that the Harris County case was defensible, as stated above, we believed we had a clear opportunity to get Houston to reject an effort to seek the death penalty for Mr. Matchett. The Walker County District Attorney offered to allow Mr. Matchett to plead guilty to two separate charges of first-degree felonies, one for murder in the capital case, for two life sentences to run cumulatively. Such an offer would allow Mr. Matchett, at that time under Texas law, to be eligible for parole in 30 years (15 years plus 15 years), which was the exact same parole eligibility available of a person who was convicted of capital murder and received a life sentence.

Mr. Matchett was remorseful for his conduct, at all times since the very inception of my representation, had always agreed that he would take life sentences if offered. Thus, when such offer was made, both Mr. Matchett and myself were elated with a result for the Walker County cases. While I advised him that the legal issues in those cases still could be pursued, his remorse for his conduct indicated that he wished to plead guilty in those cases. However, because of the pendency of the Houston case, we still had great concern.

So, with the agreement of the Court and the District Attorney, we agreed that Mr. Matchett would enter pleas of guilty to the aggravated assault of the elderly person and a murder charge as a lesser included offense to the capital case, in a single proceeding, for stacked life sentences. However, our agreement was that Mr. Matchett not be sentenced in these cases, as all parties agreed to postpone sentencing in a continued effort to convince Harris County not to seek the death penalty. It was our thought that if we could delay sentencing, to a time when Harris County would make a decision concerning whether they would seek the death penalty, then that we could take certain efforts to protect Mr. Matchett from the Walker County convictions being used against him in Houston. Mr. Weeks, the District Attorney, even made a number of efforts to try to convince Harris County to waive the death penalty in their case.

It is my understanding that during some trial proceedings in the Houston case, the prosecutor in Harris County indicated that the Walker County District Attorney had "okayed" a death penalty prosecution in Harris County. However, that was not correct. Mr. Weeks made a number of efforts to get Harris County to cooperate in working with us in this case, but they never responded to any of our efforts. In fact, I was advised that the Harris County prosecutors had made negative comments about Mr. Weeks' efforts in this regard. In my opinion, however, Mr. Weeks was performing a valid responsibility of a District Attorney, attempting to obtain justice in this case, based upon his understanding of the facts, and to save the criminal justice system substantial sums of money in prosecuting a potentially "shaky" case in Houston.

As a result of not receiving information from Harris County, we finally entered the plea of guilty to these charges on or about August 21, 1992 and then we postponed the formal sentencing of Mr. Matchett for many months attempting to work something out in Harris County. According to my recollection and records, the sentencing was postponed until early December, 1993, while efforts were made to get Harris County to waive the death penalty. Harris County refused to cooperate with our efforts in advising about any decision at all, and the Judge finally indicated that he had to proceed with sentencing. The sentencing went forth in December, 1993, and by that time, Mr. Matchett became upset that Harris County had not agreed to cooperate with us, and wanted to withdraw his pleas of guilty in Walker County.

Because such a withdrawal of his guilty pleas caused all kinds of complicated problems, I advised the trial court and the District Attorney in Walker County that it would be necessary for me to withdraw as counsel of record for him, since Mr. Matchett's decision to withdraw the pleas had made me into a necessary witness. I advised the Court and the District Attorney that I would prepare a *Pro Se* motion for new trial, asking that the plea pleas of guilty be withdrawn, and would file that motion on Mr. Matchett's behalf. I further advised the trial court and the District Attorney that new counsel should be appointed for Mr. Matchett, and that a motion for new trial

hearing should be conducted, with Mr. Matchett being given the opportunity of appealing his guilty pleas thereafter. On or about December 30, 1993, I filed the Motion For New Trial on behalf of Mr. Matchett, with a cover letter to the Court confirming our previous discussions.

I anticipated that, at sometime in the future, a hearing would be conducted, and I would be testifying. I never received any further word on that Motion For New Trial. It appears that the trial court never appointed new counsel to represent Mr. Matchett for his motion for new trial hearing, and further did not accede to my request to allow Mr. Matchett to appeal such proceeding. One of my thoughts about proceeding in this matter would be to allow Mr. Matchett to take appeals of these convictions, which would prevent them from being utilized against him for impeachment purposes in Harris County, should Harris County proceed with a capital murder prosecution against him. If these cases were pending on appeal, Mr. Matchett could testify at the guilt innocence phase of the Houston trial without these priors being used for impeachment, thus giving him a better chance to defeat a finding that he was guilty of capital murder, because he could testify to his self-defense claims in that trial.

I realize that, if convicted in Houston, the State could have nevertheless shown that he pled guilty to these Walker County charges as part of their punishment case, but at the very least, he would be given an opportunity to defend the charges at the guilt innocence phase.

III. Dealings with Donald Davis

During my investigation of these cases in Huntsville, I learned that Donald Davis had been appointed as Farley's lead Houston counsel. I tried to keep him apprised of my theories for defending the Walker County case, including the legal, factual and mitigation issues. Mr. Davis was very difficult to get in touch with, and only once returned phone calls or letters, even though I advised him that, in my opinion, both of us should work together in a joint defense of all of these cases.

In that single telephone response from Davis, after explaining my legal theories to Mr. Davis, I told him about the upcoming pretrial hearing, described above, with regard to the police officer's testimony about the Walker County search. Mr. Davis did come to that hearing, but sat in the audience, as a spectator, and as soon as a hearing was completed, immediately left, without giving me any time to talk to him about any planning. He didn't even tell me he was leaving, as he just disappeared. I know that he heard the testimony and Judge Sandel's indication that there were serious legal problems with the Huntsville case, but rather than stay over in Huntsville and talk with us about strategy, he just left the courthouse, without any discussion, and I never had any contact with him again.

I must have attempted to contact him a dozen times thereafter, but he never returned my letters or phone calls. I never knew that Houston attorney Robert Morrow had been appointed as co-counsel for Farley in Houston, because had I known that information, I would have contacted Robert, who I have known for years. I only knew

of Donald Davis, who refused to contact me at all, or to cooperate in a joint defense effort.

As a result, Mr. Davis was absolutely useless in our attempts to convince Harris County not to pursue the death penalty, nor could I explain to him about any of the strategy that we used concerning the Walker County guilty pleas, the motion for new trial, or the possible eventual appeal situation. I did not know what happened to Farley's case until many months later, when I read in the Austin newspaper that Farley had been convicted upon his plea of guilty to the Houston case.

At that time, I was completely shocked that a plea of guilty had been entered, when there were so many different theories of defense to challenge that case. It was not until many months after I read about the guilty plea did I learn that Robert Morrow was co- counsel, and on several occasions since then, I attempted to talk to Mr. Morrow about the case, but he indicated to me that he was not responsible for the trial strategy in Farley's case, and did not wish to speak about it. Having known Mr. Morrow for most of his legal career, I thought that was very surprising.

I have later been advised that, under the Harris County appointment plan at that time, a lead counsel was appointed to control all decisions, and co- counsel, such as Mr. Morrow, was not permitted to intervene into lead counsel strategy. I was surprised by this information, as it clearly deprived Farley Matchett of competent counsel in this Houston case.

There was simply no reason at all for Mr. Matchett to enter a plea of guilty in Houston, as he had defensible pretrial and trial issues in order to seek a conviction for a lesser included offense. Further, because of my investigation in Walker County, I believe that there were opportunities to prevent the Walker County convictions from being used against him should he testify in Harris County. However, because his lead counsel did not return my inquiries to him, I was unable to explain to Mr. Davis my strategy, which he obviously could have used in advising that Farley challenge the Houston case.

In fact, some months after the sentencing in Walker County, some prison inmate assisted Mr. Matchett in filing a writ of habeas corpus challenging these convictions on the basis that the entry of a plea of guilty to two separate cases, at the same time, was illegal under Texas law, where the sentences were ordered stacked, because under Texas law, a defendant could not receive cumulated sentences in a single plea proceeding. The Texas Court of Criminal Appeals set aside one of Mr. Matchett's convictions in the Walker County cases under the theory of Ex Parte La Porte, 840 S.W. 2d 412. See Ex Parte Matchett, ___ S.W.2d ___ (unpublished, No. 72,510, decided 10/16/96). Had Mr. Davis investigated this situation, he could have raised this issue at trial appeal, but I have been advised he did not take this action either.

Further, because Mr. Davis did not contact me, he did not pursue a claim that that the guilty pleas in Walker County could have been, theoretically, withdrawn, and/or those convictions appealed. Even if Davis did not wish to talk to me, he could have instructed Mr. Morrow to do so, and a substantial amount of additional investigation materials could have been provided to the Houston counsel, including legal authorities, mitigating witnesses, expert witnesses, character witnesses, etc, which could have been utilized in the Harris County prosecution. It is my understanding

that very little of this information developed in our Walker County prosecution was utilized in Houston by Mr. Davis, under his legal strategies.

IV. Conclusion –ineffective assistance claim

While I have been told that the theory of the Harris County prosecution was changed, after the Walker County proceedings had ended, nevertheless, under the facts of Mr. Matchett's case, in my opinion, there was simply no reason to enter a plea of guilty to a capital murder charge where the death penalty was being sought. You simply cannot give up the potential legal issues that are waived under such circumstances, especially in Houston, where jurors are prone to give the death penalty, and where the prosecutors continuously seek that penalty. Further, it was crucial to utilize the Harris County confession to show self-defense and/or provocation during a challenged Harris County case, in order to try to get the jurors to find the lesser included murder offense or a verdict of not guilty of murder.

Because the State could show all the bad conduct committed in Walker County, as a result of the confession, it was simply not a valid strategy effort at all to waive all guilt-innocence issues to try to rest your entire strategy upon punishment issues. A plea of not guilty should have been entered and a possible lesser included offense obtained in Houston. The extraneous Walker County murders would not have been admissible at guilt innocence in the Houston case. Even if the jury would have found Farley guilty of capital murder in Houston, you still had the potential of presenting all of the same mitigation evidence again during the punishment phase. Thus, under the facts of this case, in my opinion, after specializing in criminal law for almost 32 years, and death penalty litigation for more than 22 years, I can legitimately say that a strategy decision to enter a plea of guilty in Farley's Houston case was a clear mistake on behalf of counsel, and that no competent attorney would have entered a plea of guilty under the circumstances.

Furthermore, after reviewing some of the evidence of Mr. Matchett's trial, and discussing the Harris County evidence with Mr. Charlton, I have been advised that there were also issues that could have been presented in Houston to challenge the legality of his arrest, even though the State presented evidence during the Houston trial that his arrest was not based upon the Walker County arrest warrant, as the homicide detectives had testified to in the Walker County pretrial hearings.

It appears to me, based upon the information concerning the Houston arrest given to me by Mr. Charlton, that based upon the following facts, a legitimate challenge to the Houston arrest could have been made, to wit:

Background Facts: I was informed that Johnny Moore, homicide detective for the Houston Police Department, testified that he got a call from family members of the Houston victim, who said that Farley was at a local bank trying to cash one of the victim's checks. Detective Moore went to the bank and talked to the teller, who had kept Farley's ID and ascertained that Farley had tried to pass a forged check. The teller had called the family, learned that the victim was dead and that Farley had no business passing the check. The teller allegedly told Matchett that he would have to

come back to get his money and that she would keep his ID until the next day. Mr. Matchett then left the bank.

Detective Moore was asked by the prosecutor, during trial, whether he formed an opinion that Farley had committed offense of forgery and Moore replied in the affirmative. The detective then returned to the location where Matchett was last seen and sees him standing in the driveway. Matchett attempts to flee when the police start rushing up the driveway to arrest him.

2. Legal Opinion Of The Validity Of Arrest

After practicing law for 32 years, specializing in analysis of criminal law problems in this State, I believe that even if the State did not rely upon the Walker County arrest for warrant for justification of Mr. Matchett's arrest, there were still problems with this arrest.

No evidence was adduced about Moore's efforts to get an arrest warrant and no evidence was adduced that he had information from a credible source that "*the offender was about to escape, so that there was no time to procure a warrant.*" See Art. 14.04, Code Of Criminal Procedure. None of the Chapter 14 requirements of exigent circumstances were met. The closest the State gets to a showing of compliance with the statute is that Moore thought it was a possibility that Matchett might flee "another crime scene". However, there was no factual support for such opinion, as the evidence shows that Matchett returned to the residence where he was staying, without any efforts to flee the jurisdiction. In short, even if the State did advance an alternate theory, the arrest was still illegal.

None of these arguments were ever made to the trial court. No issue was ever advanced to the trial court on these grounds that the arrest was illegal because no warrant was obtained and consequently, Matchett should never have pleaded guilty in light of that potential challenge to the validity of the confession. Further, I note that you no objection was made to the introduction of the confession relating to the Walker County murder at the punishment phase based on these theories, or any other theory.

Under the circumstances, the failure to challenge the Houston arrest on these grounds, at any time, supports a claim that Trial counsel rendered the ineffective assistance of counsel.

While there are capital cases which perhaps, under unusual facts, could justify an attorney advising a defendant to enter a plea of guilty, where the death penalty is sought, this was not one of those cases, under my experience, background and knowledge. For these reasons, in my opinion, Farley Matchett was deprived of the effective assistance of counsel during his Houston trial, by his attorney's advise to enter a plea of guilty.

Even after an appeal was taken of this death penalty guilty plea, the Court of Criminal Appeals had to effectively change the law in order to affirm this conviction because of the improper admonishments given to Mr. Matchett by the trial court under Article 26.13, Code Of Criminal Procedure. See Matchett v. State, 941 S.W. 2d 222, decided on November 6, 1996.

V. Habeas Corpus counsel's Incompetency

I also have seen the habeas corpus petitions filed on behalf of Mr. Matchett under the provisions of Article 11.071, by Houston attorney Tom Moran, who had been appointed by the Court of Criminal Appeals to represent Farley in his post-conviction habeas corpus proceedings.

According to my review of the files and records, Mr. Moran was appointed by the Court of Criminal Appeals on November 22, 1996, under the provisions of Article 11.071. While at that time, the procedures dealing with the filing of habeas petitions under Article 11.071 were governed and controlled exclusively by the Texas Court of Criminal Appeals, no motion was filed in the Court of Criminal Appeals to extend the time, or to file a "skeleton habeas petition", which had been authorized by the Court of Criminal Appeals as a "stop gap" measure to prevent the federal habeas corpus statute from running, only recently passed in April, 1996, thus preventing the federal statute of limitations from barring federal review of these cases.

Even though Mr. Moran did not request an extension of time from the Court of Criminal Appeals, or permission to file a "skeleton habeas petition", the records of the indicate that Moran requested such extension and permission to file a skeleton Petition from the trial judge, the Presiding Judge of the 178th District Court in Houston, Judge Harmon.

The records reflect that Judge Harmon granted permission for an extension and the filing of a Skeleton Petition on May 12, 1997. Such order from judge Harmon apparently permitted Moran to file the final habeas petition "90 days after" Mr. Moran completed his service as an attorney in the Bosnian War Criminal Trials being conducted at the *Hague*, in the Netherlands. At some time during or before Moran's appointment as counsel, he had accepted this job in the Netherlands, recognizing that he would be out of the United States for many months on this assignment. Nevertheless, Moran accepted this job, and made no effort to withdraw from his representation of petitioner Matchett due to this appointment as part of the War Criminal Trials.

On May 12, 1997 Moran filed a "skeleton habeas petition" in the state trial court, containing 72 habeas corpus claims, with this skeleton Petition being 10 pages in length, containing only "habeas claims" without any argument, reference to the record, etc. This original "habeas petition" appears to be a "skeleton petition" filed merely to stop to the federal time deadlines from running in habeas corpus proceedings. This petition does not perfect any habeas corpus issues, and does not even qualify as a petition at all, inasmuch as no factual or legal claims are made therein challenging any particular legal error committed at Farley's trial. In my opinion, such petition would not qualify as a legitimate challenge to the conviction, as recently interpreted by the Court of Criminal Appeals in Ex Parte Kerr, 64 S.W.3d 414.

Moran then filed, in August, 1997 a document entitled, as I recall, a "Brief in Support Of Habeas Corpus Petition", raising 5 issues. This "Brief", therefore seems to

support, according to Moran, a previous habeas corpus petition that had not even been filed! In my review of the claims contained within this “Brief”, it appears that one claim was that one of the prior Walker County convictions was “void”, but there was no argument made that the underlying facts of that conviction, as proven by Mr. Matchett’s confession, was not admissible. Under the circumstances, that claim was clearly frivolous. The second claim, dealing with an argument that the evidence was insufficient to support a showing of “future dangerousness” is not, in my opinion, under Court of Criminal Appeals jurisprudence, any cognizable habeas corpus claim in Texas. The remaining claims would also be barred from habeas corpus review under the Court of Criminal Appeals decision in Ex Parte Gardner, 959 S.W. 2d 189. Therefore, and it is highly questionable whether the document filed not by Moran in August, 1997, could even be considered a legitimate post-conviction writ of habeas corpus. Compare Ex Parte Kerr, supra.

Further, I would also note that at some time after Mr. Moran’s appointment, he called me, and I gave him my opinion that Farley’s plea of guilty was involuntary, and that he should challenge the competency of counsel at Farley’s trial. He indicated that he would be getting an affidavit from me, but he never contacted me again.

Mr. Moran, while representing petitioner, was out of the United States for many months in the *War Crimes Trials* in Europe, obviously preventing him from properly investigating and presenting petitioner’s claims to the state courts. He should have withdrawn from representation of petitioner, but he did not. As a result, Moran failed to raise a claim of ineffective assistance of trial counsel which, as *Affiant* has set out above, clearly should have been raised in this habeas petition. As a result, petitioner herein has been deprived of a full and fair habeas corpus proceeding in the state courts.

VI. Final conclusion

In my opinion, no competent habeas corpus counsel would have failed to raise a claim that the guilty plea entered by Farley in the Houston case was based upon ineffective assistance of trial counsel and an involuntary plea on Farley’s behalf, due to such ineffective assistance of counsel. However, these claims were not raised.

For all of these above reasons, in order to comport with fairness and Due Process Of Law, Mr. Matchett should be given a new habeas corpus proceeding under Article 11.071, during which competent habeas counsel should raise a claim of ineffective assistance of trial counsel, and a claim that Mr. Matchett’s plea of guilty in Houston was involuntary due to ineffective assistance of counsel.

Because of my strong feelings about this case, I will testify that, in my opinion, Mr. Matchett was deprived of the effective assistance of counsel both at trial and on habeas corpus, and should be given at least one legitimate opportunity by the Courts of the State of Texas to challenge the validity of this conviction on these grounds.

Roy E. Greenwood

OATH

BEFORE ME, the undersigned authority, on this day personally appeared Roy E. Greenwood, who first being duly sworn did state that the facts contained in the foregoing document are true and correct.

Subscribed And Sworn To, before me, on this the ____ day of _____, 2002.

Notary Public, State of Texas

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