

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BARTON RAY GAINES,	§	
TDCJ-CID No. 1139507,	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:08-CV-147-Y
	§	ECF Case
NATHANIEL QUARTERMAN,	§	Referred to U. S. Magistrate Judge
Director, Texas Department of	§	Charles Bleil
Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent.	§	

**RESPONDENT QUARTERMAN'S PRELIMINARY RESPONSE
WITH BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Nathaniel Quarterman, Director of the Texas Department of Criminal Justice, Correctional Institutions Division ("TDCJ-CID"), Respondent herein ("the Director"), by and through his attorney, the Attorney General of Texas, and files this **Respondent Quarterman's Preliminary Response with Brief in Support**. In support thereof, the Director would respectfully show the Court the following:

JURISDICTION AND DENIAL

This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 2241, 2254. Barton Ray Gaines ("Gaines"), was convicted in Tarrant County, Texas, 0836985A Tr 41; 0836979A Tr 86,¹ which

¹ "Tr" refers to the "CLERK'S RECORD" of the papers filed in the proceedings of the convictions, preceded by the cause number and followed by the page number(s).

is located in the Northern District of Texas, Fort Worth Division; therefore, jurisdiction is proper in this Court.² *See Wadsworth v. Johnson*, 235 F.3d 959, 960-61 (5th Cir. 2000) (jurisdiction is proper in either the district of custody or conviction)(quoting 28 U.S.C. § 2241(d)). The Director denies all allegations of fact made by Gaines, except those supported by the record and those specifically admitted herein.

BACKGROUND

The Director was served with an order requiring him to file a preliminary response³ within 30 days of the date of the order. The order was dated April 2, 2008, requiring the Director to file his response on or before May 2, 2008. The Director is required to answer a set of seven specific questions, which will be set out below and answered directly following the stated question. The Director is also required to file the state court records in support of his response within the same time period. This response is timely filed electronically on April 29, 2008, and the state court records are timely placed in the mail on the same date.

² This federal writ of habeas corpus was originally filed in the Dallas Division under Civil Action No. 3:08-CV-0371-K (BH) and was transferred to this Court by order dated March 4, 2008.

³ Because Gaines's petition is barred by the federal habeas corpus statute of limitation, any inquiry into exhaustion is unnecessary to the resolution of this defense. The statute of limitation is a threshold defense which will preclude any consideration of the merits of Gaines's claims. The Director does not waive exhaustion and reserves the right to argue exhaustion if this Court refuses to dismiss this writ as time-barred. *See* 28 U.S.C. § 2254(b)(2) (2007) ("[a]n application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.").

STATE COURT AND OTHER RECORDS

Records of Gaines's direct appeals, *Gaines v. State*, slip op. Nos. 02-02-498-CR, and 02-02-499-CR, *Gaines v. State*, PDR Nos. 1787-04 and 1788-04, and state writs, *Ex parte Gaines*, Application Nos. 69,338-01 and -02, are available and are being placed in the U.S. mail on April 29, 2008. Also attached as "Appendix I" is the records of Gaines's previous federal writ of habeas corpus and attached as "Exhibit A" is the TDCJ-CID mail logs reflecting when Gaines received notification of the denial of his state writs.

PRELIMINARY RESPONSE

The order of this Court requires the following:

Respondent is directed to file a preliminary response This response shall be limited to providing the Court with the following information, if relevant to the claim or claims raised:

- (a) the date the judgment[s] of conviction[s] w[ere] entered: December 12, 2002. 0836985A Tr 41; 0836979A Tr 86. However, this question is irrelevant in light of Gaines's direct appeals.
- (b) the date . . . appeals w[ere] perfected or the time for seeking direct review expired: Convictions affirmed on direct appeal on October 14, 2004. *Gaines v. State*, slip op. Nos. 02-02-498-CR and 02-20-499-CR, at *17. Petitions for Discretionary review ("PDR") were refused May 18, 2005, *id.*, PDR Nos. 1787-04 and 1788-04, but he was allowed 90 days from the refusal of his PDR to file a writ of cert. SUP. CT. R. 13.1 & 13.3 The 90th day was August 16, 2005.
- (c) the date the judgment[s] of conviction[s] became final: *See* question (b) (the judgments became final for purposes of the statute of limitations on August 16, 2005).
- (d) the date the factual predicate of the claim or claims presented

could have been discovered through the exercise of due diligence, if applicable: N/A (all claims discoverable prior to finality date of the judgments of convictions, *see* fed. form pet., at 5-6).

- (e) the date any relevant application or motion for postconviction relief was filed in the trial court: November 1, 2006. *Ex parte Gaines*, Application No. 69,338-01, EventID 2320005, at 2, 10; *Ex parte Gaines*, Application No. 69,338-02, EventID 2320008, at 2, 10.⁴
- (f) the date any relevant application or motion for postconviction relief was finally determined by the Texas Court of Criminal Appeals and the date the Petitioner was notified of that determination: Both writs were denied on February 27, 2008. *Ex parte Gaines*, Application No. 69,338-01, EventID 2320005, at page after cover; *Ex parte Gaines*, Application No. 69,338-02, EventID 2320008, at page after cover. Gaines was timely notified by the Court of Criminal Appeals on March 3, 2008, and by his writ counsel on March 6, 2008. *See* business records affidavit and “INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG,” at next to the last and last pages (attached as “Exhibit A”).
- (g) whether Respondent believes that this action is barred by limitations under 28 U.S.C. § 2244(d): Yes, as discussed below.

⁴ There are several volumes of the state writ transcripts, because each state writ contains a complete copy of the trial court statement of facts and transcripts. Therefore, there are in fact three copies of the statement of facts, and transcripts—one copy for each state writ and one copy from the Second Court of Appeals. In order to accurately cite to these records the Director will use the “EventID” numbers on the cover of each state writ transcript volume. The page number reference will be to the bates stamp page number, not the actual numerical page of the transcript. The bates stamp is on the lower right side of the page. For instance, in the first cite to the state writ transcripts, the page-2-cite is actually on the seventh page of the transcript, counting the cover page as page 1.

The Antiterrorism and Effective Death Penalty Act of 1996, hereinafter referred to as the “AEDPA,” applies to Gaines’s petition, which was filed after the date of the act’s passage. *Williams v. Cain*, 125 F.3d 269, 274 (5th Cir. 1997).

As it relates to this preliminary response, the AEDPA provides that:

(d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d) (West 2007).

Applying the one-year limitation period contained within § 2244(d), Gaines's petition is untimely and barred by the statute of limitations. Gaines's allegations relate to the validity of his two 2002 aggravated robbery convictions. 0836985A Tr 41; 0836979A Tr 86. Gaines's allegations were discoverable at the time of his trial. *See* fed. pet., at 5-6. Section 2244(d)(1)(A) provides that the one-year limitation period shall run from the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. Under 28 U.S.C. § 2244(d)(1)(A), Gaines's convictions became final on August 16, 2005, the last day he could have filed a timely writ of cert. petition. Therefore, this petition was due to be filed on or before August 16, 2006, in order to be filed within the one-year limitation period. Gaines's counsel filed this petition on March 3, 2008. Civil Action No. 3:08-CV-00371, and Civil Action No. 4:08-CV-147, docket entry Nos. 1.

Further, it is clear that, pursuant to 28 U.S.C. § 2244(d)(2) ("[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."), Gaines is not entitled to tolling because he filed his state writs, challenging these convictions, on November 1, 2006, *Ex parte Gaines*, Application No. 69,338-01, EventID 2320005, at 2, 10; *Ex parte Gaines*, Application No. 69,338-02, EventID 2320008, at 2, 10, after the limitations period expired on August 16, 2006. Therefore, this action is time-barred.⁵

⁵ Gaines is not entitled to tolling for the time that his previous federal writ was pending. *See Grooms v. Johnson*, 208 F.3d 488, 489 (5th Cir. 1999) (a previous federal

The record, moreover, does not reflect that any unconstitutional “State action” impeded Gaines from filing for federal habeas corpus relief prior to the end of the limitations period. 28 U.S.C. § 2244(d)(1)(B). Furthermore, Gaines has not shown that he could not have known the factual predicate of his claims earlier. 28 U.S.C. § 2244(d)(1)(D). His claims are based on a factual predicate that was available during his trial held in 2002. Finally, Gaines’s claims do not concern a constitutional right recognized by the Supreme Court within the last year and made retroactive to cases on collateral review. 28 U.S.C. § 2244(d)(1)(C). Gaines does not satisfy any of the exceptions to the AEDPA statute of limitation; therefore, consideration of his petition is time-barred.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Director respectfully requests that the Court dismiss this action, with prejudice, because it is time-barred under the AEDPA statute of limitations.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

writ dismissed for failure to exhaust state remedies does not toll the statute of limitations); *see also Duncan v. Walker*, 533 U. S. 167, 181-82 (2001) (same). Gaines’s previous federal writ challenged these convictions; it was dismissed for failure to exhaust; Gaines was denied a stay and abatement of that writ to exhaust; and, Gaines was warned that the statute of limitations was applicable and not foreclosed by the filing of his first federal writ. *See Gaines v. Quartermann*, Civil Action No. 4:06-CV-409-Y (attached as Appendix I). There is also no basis for equitable tolling here (Gaines waited almost one year after his PDR was refused (5/18/05) to file his first federal writ (5/4/06). Grooms waited over a year after his first federal writ was denied to file his second federal writ; therefore, he was not entitled to equitable tolling. *Grooms*, 208 F.3d at 489).

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First Assistant Attorney General

ERIC J.R. NICHOLS
Deputy Attorney General for
Criminal Justice

EDWARD MARSHALL
Chief, Postconviction Litigation Division

*Attorney-In-Charge

s/ S. Michael Bozarth
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Austin, Texas 78711
(512) 463-2032
Facsimile No. (512) 936-1280

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF INTERESTED PERSONS

I do hereby certify, pursuant to Local Rule 3.1(f) of the Northern District of Texas that other than the Petitioner, Petitioner's counsel, and the Respondent, counsel for the Respondent is unaware of any person with a financial interest in the outcome of this case.

s/ S. Michael Bozarth
S. MICHAEL BOZARTH
Assistant Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing **Respondent Quarterman's Preliminary Response with Brief in Support** has been electronically filed with the clerk of this Court and served by placing same in the United States Mail, postage prepaid, on this the 29th day of April, 2008, addressed to:

M. Michael Molwa
Counsel for Petitioner
1414 W. Wheatland
Suite 250
Duncanville, Texas 75116

s/ S. Michael Bozarth
S. MICHAEL BOZARTH
Assistant Attorney General

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BARTON RAY GAINES,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. 4:06-CV-409-Y
	§	
NATHANIEL QUARTERMAN,	§	
Director, T.D.C.J.	§	
Correctional Institutions Div.,	§	
Respondent.	§	

FINAL JUDGMENT

In accordance with the order issued this same day, and Federal Rule of Civil Procedure 58, Barton Ray Gaines's petition for writ of habeas corpus under 28 U.S.C. § 254 is DISMISSED WITHOUT PREJUDICE, except as to any application of the federal statute of limitations or other federal procedural bar that may apply.¹ All costs of court are taxed against the party that incurred them.

SIGNED November 16, 2006.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

¹A one-year statute of limitations is now applicable to the filing of non-capital § 2254 habeas corpus petitions in federal court. See 28 U.S.C.A. § 2244(d)(1-4) (West Supp. 2006). The statute of limitations is tolled, however, while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C.A. § 2244(d)(2) (West Supp. 2006).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BARTON RAY GAINES,	\$	
Petitioner,	\$	
VS.	\$	CIVIL ACTION NO. 4:06-CV-409-Y
	\$	
NATHANIEL QUARTERMAN,	\$	
Director, T.D.C.J.	\$	
Correctional Institutions Div.,	\$	
Respondent.	\$	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Barton Ray Gaines, along with the October 20, 2006, findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until November 10 to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the proposed findings, conclusions and recommendation of the United States magistrate judge filed on October 20, 2006. The Court concludes that the petition for writ of habeas corpus should be dismissed for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

Respondent Quartermann's October 9, 2006, motion to dismiss [docket no. 14] is GRANTED.

Barton Ray Gaines's petition for writ of habeas corpus under 28 U.S.C. § 254 is DISMISSED WITHOUT PREJUDICE, except as to any

application of the federal statute of limitations or other federal procedural bar that may apply.¹

SIGNED November 16, 2006.



TERRY R. MEANS

UNITED STATES DISTRICT JUDGE

¹A one-year statute of limitations is now applicable to the filing of non-capital § 2254 habeas corpus petitions in federal court. See 28 U.S.C.A. § 2244(d)(1-4) (West Supp. 2006). The statute of limitations is tolled, however, while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C.A. § 2244(d)(2) (West Supp. 2006).

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BARTON RAY GAINES,
Petitioner,

v.

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

§
§
§
§
§
§
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§

Civil Action No. 4:06-CV-409-Y

FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND NOTICE AND ORDER

This cause of action was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b), as implemented by an order of the United States District Court for the Northern District of Texas. The Findings, Conclusions, and Recommendation of the United States Magistrate Judge are as follows:

I. FINDINGS AND CONCLUSIONS

A. NATURE OF THE CASE

This is a petition for writ of habeas corpus by a state prisoner under 28 U.S.C. § 2254.

B. PARTIES

Petitioner Barton Ray Gaines, TDCJ #1139507, is in custody of the Texas Department of Criminal Justice, Correctional Institutions Division, in Iowa Park, Texas.

Respondent Nathaniel Quarterman is the Director of the Texas Department of Criminal Justice, Correctional Institutions Division.

C. FACTUAL AND PROCEDURAL HISTORY

Gaines is serving two thirty-five-year sentences for his 2002 convictions for aggravated

robbery with a deadly weapon in cause numbers 0826979A and 0836985A in the 213th Criminal District Court of Tarrant County, Texas. (1Clerk's R. at 86; 2Clerk's R. at 41.)¹ Gaines appealed his convictions, but the Second District Court of Appeals affirmed the trial court's judgments on October 14, 2004, and the Texas Court of Criminal Appeals refused his petition for discretionary review on May 18, 2005. *Gaines v. Texas*, Nos. 2-02-498-CR & 2-02-499-CR, slip op. (Tex. App.—Fort Worth Oct. 14, 2004); *Gaines v. Texas*, PDR Nos. 1787-04 & 1788-04. Gaines filed this federal petition for writ of habeas corpus in the Dallas Division on May 4, 2006.² The action was transferred to this Court by order dated June 9, 2006.

D. RULE 5 STATEMENT

Quarterman maintains that Gaines's claims have not been properly exhausted in the state courts as required by 28 U.S.C. § 2254(b) and (c), and he moves for dismissal of the petition on exhaustion grounds. (Resp't Motion to Dismiss at 4-7.)

E. EXHAUSTION OF REMEDIES IN STATE COURT

Applicants seeking habeas corpus relief under § 2254 are required to exhaust all claims in state court before requesting federal collateral relief. 28 U.S.C. § 2254(b)(1), (c)³; *Fisher v. Texas*,

¹"1Clerk's R." refers to the trial court clerk's record in cause number 0836979A; "2Clerk's R." refers to the trial court clerk's record in cause number 0836985A.

²A prisoner represented by counsel in a habeas corpus proceeding is not entitled to the benefit of the "mailbox rule." *Cousin v. Lensing*, 310 F.3d 843, 847-49 (5th Cir. 2002).

³The terms of 28 U.S.C. § 2254(b) and (c) provide in pertinent part as follows:

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that —

(A) the applicant has exhausted the remedies available in the courts of the State; or

169 F.3d 295, 302 (5th Cir. 1999). A Texas prisoner may satisfy the exhaustion requirement by presenting both the factual and legal substance of his claims to the Texas Court of Criminal Appeals in either a petition for discretionary review or a state habeas corpus proceeding pursuant to article 11.07 of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 11.07 (Vernon 2005); *Alexander v. Johnson*, 163 F.3d 906, 908-09 (5th Cir. 1998); *Bd. of Pardons & Paroles v. Court of Appeals for the Eighth Dist.*, 910 S.W.2d 481, 484 (Tex. Crim. App. 1995). This requires that the state court be given a fair opportunity to pass on the claims, which in turn requires that the applicant present his claims in a procedurally proper manner according to the rules of the state courts. *See Depuy v. Butler*, 837 F.2d 699, 702 (5th Cir. 1988).

Gaines raises two grounds for relief: (1) he was denied effective assistance of trial counsel, and (2) his conviction was obtained by pleas of guilty that were not made voluntarily, or made with an understanding of the nature of the charges and the consequences of his pleas, due to the acts and/or omissions of trial counsel. (Petition at 8.) The record reflects that Gaines has not exhausted his state court remedies in a procedurally correct manner with respect to the claims presented. Although Gaines raised the issues of ineffectiveness of trial counsel and voluntariness of his pleas in his brief on appeal and his petition for discretionary review, he did not raise the specific claims raised herein. Consequently, the state's highest court has not been afforded a fair opportunity to

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

consider the merits of Gaines's claims, and the claims are unexhausted for purposes of federal habeas review. Gaines must first pursue his state habeas corpus remedies before seeking relief under § 2254. Absent a showing that state remedies are inadequate, such showing not having been demonstrated by Gaines, he cannot now proceed in federal court in habeas corpus. Accordingly, dismissal of this petition for lack of exhaustion is warranted so that Gaines can fully exhaust his state court remedies and then return to this court, if he so desires, after exhaustion has been properly and fully accomplished.⁴

In his reply, Gaines requests a stay of the action so that he may return to state court for purposes of exhausting his state remedies. Where a petitioner fails to exhaust his claims in state court, a federal court has the discretion to either stay and abate or dismiss the action. *See Brewer v. Johnson*, 139 F.3d 491, 493 (5th Cir.1998). Stay and abeyance should be granted only in limited circumstances when there is good cause for the failure to exhaust, the unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics. *See Rhines v. Weber*, 125 S. Ct. 1528, 1535 (2005). Gaines has not demonstrated circumstances warranting a stay.

II. RECOMMENDATION

It is therefore recommended that Quarterman's motion to dismiss be GRANTED and Gaines's petition be dismissed without prejudice, except as to any application of the federal statute of limitations or other federal procedural bar that may apply.

⁴28 U.S.C. § 2244(d) imposes a one-year statute of limitations for filing habeas corpus petitions in federal court, subject to any applicable tolling. *See* 28 U.S.C. § 2244(d)(1)-(2).

**III. NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT**

Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions, and recommendation within ten (10) days after the party has been served with a copy of this document. The court is extending the deadline within which to file specific written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation until November 10, 2006. The United States District Judge need only make a *de novo* determination of those portions of the United States Magistrate Judge's proposed findings, conclusions, and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(B)(1). Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual finding or legal conclusion accepted by the United States District Judge. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc op. on reh'g); *Carter v. Collins*, 918 F.2d 1198, 1203 (5th Cir. 1990).

IV. ORDER

Under 28 U.S.C. § 636, it is ORDERED that each party is granted until November 10, 2006, to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation. It is further ORDERED that if objections are filed and the opposing party chooses to file a response, a response shall be filed within seven (7) days of the filing date of the objections.

It is further ORDERED that the above-styled and numbered action, previously referred to

the United States Magistrate Judge for findings, conclusions, and recommendation, be and hereby
is returned to the docket of the United States District Judge.

SIGNED October 20, 2006.

/s/ Charles Bleil
CHARLES BLEIL
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

AFFIDAVIT

THE STATE OF TEXAS

§
§
§


BEFORE ME, the undersigned authority, personally appeared Karri Hansford, who, being by me duly sworn, deposed as follows:

"My name is Karri Hansford. I am over twenty-one years of age, of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

I am employed as the Mailroom Supervisor at the James V. Allred Unit of the Texas Department of Criminal Justice-Institution Division, and my office is located in Wichita Falls, Texas. I do hereby certify that I am the custodian of mailroom records maintained in the regular course of business at the James V. Allred Unit of the Texas Department of Criminal Justice- Criminal Institution Division.

I have reviewed Mail Records of the James V. Allred Unit. I hereby certify that the attached copies are true and correct copies of the original records now on file in my office and in my custody. I further certify that the records attached hereto are maintained in the usual and regular course of business at the James V. Allred Unit of the Texas Department of Criminal Justice, Criminal Institution Division. All memoranda, reports, records or data compilations kept therein are made at or near the time by, or from information transmitted by, a person with knowledge of events, acts, conditions, opinions or diagnosis described. These records, in-coming and out-going legal logs, of Offender Gaines, Barton #1139506 are kept in the course of practice of this institution to make such memoranda, reports, records or data compilations.

In witness whereof, I have hereto set my hand this the 11th day of April, 2008."



Signature

Karri Hansford

Mailroom Supervisor

James V. Allred Unit

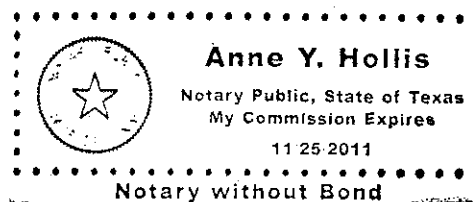
Texas Department of Criminal Justice- Criminal
Institution Division

SWORN TO AND SUBSCRIBED BEFORE ME, by the said Anne Y. Hollis on this the 11th day of April, 2008, to certify which witness my hand and seal of office.

My Commission Expires:
11-25-2011


Anne Y. Hollis

NOTARY PUBLIC in and for the State of Texas



OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Quines, Barton	1139507	M. Michael Moxie, PLLC AHJ 1318 N. Main St. #103B Duncanville, TX 75137	BJP	10/30/08

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Coates, Barton	1139507	Michael Monica Atty 1318 S Main St Suite 103B Pomcanville, TX 75137	KS	2/2/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

34 Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Office
Garcia Bacton	1139507	Michael Moulton, Atty 1318 South Main St Duncanville TX 75132	CD

3/9/07

DEVELOPING EVIDENCE, STEPHEN AND MICHAIL MATHIS FOR

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Michael Barton	1139507	Michael Mowla 1318 South Main St Duncanville, TX 75137 Suite 103B	JK	7/3/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

 JFA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Gaines, Barton	1139507	Michael Mowla Atty 1318 S. Main St. Ste 103B Duncanville TX 75137	QJ	7/10/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

_____ Unit *QA*

Inmate's Name	Inmate's Number	Addressee Name and Address	Of
<i>James, Barton</i>	<i>1139507</i>	<i>M. Michael Maula, Atty 1318 S Main St Duncanville TX 75137</i>	<i>MB</i>

4/9/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
James, Barton	1139507	1216144 Houston, TX 318 South Main St. Ste. 1038 Burgessville, TX 75137	JK	4/27/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

 JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Gaines, Barton	1139507	Michael Mowla Atty 1318 S. Main St Dumasville TX 75137	Q3	8/31/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

for Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Offi
Hernandez, Esteban	1139507	Michael Morata, PLLC 1318 S. Main St. Westborough, MA 01581	TD

9/10/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

_____ Unit *Ja*

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
<i>Myron Barton</i>	<i>1139507</i>	<i>M. Michael Novak PLLC atty 1318 S. Main St. Ste 1038 Dumfriesville, TN 37037</i>	<i>JD</i>	<i>10/9/07</i>

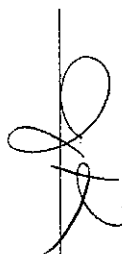
OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

QA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Off
Guinea, Borters	1139507	M. Michael Mowla, 444 1318 S Main St Duncanville TX 75137	CB

10/19/07

OUTGOING LEGAL, SPECIAL AND MEDIA WRITE LOG

 Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Gaines, Barbara	1139507	M. Michael Neely 1414 W. Wheatland St. Duncanville, TX 75116	J.K.	11/4/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

 Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
James, Barton	1139507	M. Mitchell Medina, Atty. 1414 W. Wheeler Ave. Ste. 350 Duncanville, TX 75116	JK	12/27/07
James, Barton	1139507	"	JK	12/27/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

gfa Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	0
Gaines, Barton	1139507	M. Michael Moulton 1414 W. Robert Ave. Ste. 250 Duncanville, TX. 75116	gk

12/12/07

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Off
James Barton	1139507	Michael Inouela atty Ste 350 1414 W Wheatland Duncanville Tx 75116	7A

1/13/08

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

 Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Offi
Garcia, Barton	1139507	M. Michael Mowla, Atty Ste 250 1414 W Wheatland - Duncanville TX 75116	JB 2/5/08

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Gaines, Barton Jeffrey	1139507	M. Michael Mowbray, PLLC 1414 W. Westland Ste 250 Duncanville, TX 75116	AG	2/13/08

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
James, Barton	1139507	Michael Moulton Ste 280 1414 W Wheatland Rd Duncanville TX 75116	MA	2/21/08

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Office
James, Barton	1139507	Michael Molya P/LC 1414 W Highland Rd Ste 250 Duncanville, TX 75116	AG

2/25/08

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

 Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Garcia, Barton	1139507	Michael Maura, atty 1414 W Wheatland Rd - Bluewater	GB	3/4/08

OUTGOING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Addressee Name and Address	Officer's Initials	Date
Garcia, Barton	1139507	M. Michael Moulton, atty 5150 1414 W. Wheatland Rd - Roundville TX 76116	JA	3/5/08

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

SA Unit

Officer's Signature

GB

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received	Date Delivered	Officer's Initials
Gaines, Barton	1139507	Mr. Michael Mowles, Attorney 1318 S. Main St. #103B - Duncanville TX 75137	12/1/06	12-1-06	GB

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

SA _____ Unit

Officer's Signature

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received	Date Delivered	Officer's Initials
Gaines, Barton	1139507	M. M. Mowla, atty 1318 S Main St #103B-Duncanville, TX 75137	12/21/06	12/21/06	AB

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

_____ Unit *QA*

Officer's Signature *LB*

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received	Date Delivered	Officer's Initials
<i>Carpines, Barton</i>	<i>1139507</i>	<i>M. Michael Snowla, Atty Ste 103B 1318 S Main St Doncaster Tx 75137</i>	<i>2/2/07</i>	<i>2-2-07</i>	<i>4E-12 LIE</i>

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

 Unit

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received
Grimes, Barton	1139507	M. Michael Mowla, c/o 54103B 1318 S. Main St Duncanville TX 75137	4/5/07

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Officer's Signature CB

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received	Date Delivered	Officer's Initials
Seena, Barton	1139507	M. Michael Mowda, atty 5th St 1414 W Wheatland - Minneapolis MN 55404	11/13/07	8K-14 11-13-07	AG

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA

Unit

925 -3

(928)

7A

Officer's Signature

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received	Date Delivered	Officer's Initials
Gaines, Barton	1137007	M. Michael Morala atty 1414 Wheatland St St. 350 Vincennes IN 46201	2/1/08	2-1-08	JA

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

SA Unit

Officer's Signature SA

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received	Date Delivered	Officer's Initials
Garcia, Barton	1139507	et al. Univ. Appeals PO Box 12308 - Austin TX 78711	2/11/08	4D-62 2-12-08	CO
Garcia, Barton	1139507	" "	2/11/08	2-12-08	CO

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

QA Unit

SB
Officer's Signature

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received	Date Delivered	Officer's Initials
Gaines, Barton	1139507	for Cum Appala-01 TX PO Box 12308 - Austin TX 78711	3/3/08	3/3/08	SB
Gaines, Barton	1139507	" "	3/3/08	3/3/08	SB

INCOMING LEGAL, SPECIAL AND MEDIA MAIL LOG

JA Unit

Inmate's Name	Inmate's Number	Sender Name & Return Address	Date Received
Shaw, Boston	1139507	M. Michael Moore PLLC 1414 W Wheatland St 250 Durhamville TX 75116 Att@Law	3.6.08