

Case No. _____
(The district clerk of the county of conviction will fill in this blank.)

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS
APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE ARTICLE 11.07**

NAME: Barton R. Gaines

DATE OF BIRTH: 10/25/82

PLACE OF CONFINEMENT: Granbury, Texas

WARDEN: N/A

TDCJ-CID NUMBER 01139507 SID NUMBER: 06736464

(1) This application concerns (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> a conviction | <input type="checkbox"/> parole |
| <input checked="" type="checkbox"/> a sentence | <input type="checkbox"/> mandatory supervision |
| <input type="checkbox"/> time credit | <input type="checkbox"/> out-of-time appeal or petition for
discretionary review |

(2) What are the court number and county of the district court in which you were convicted?

213th Judicial District Court, Tarrant County

(3) What was the case number in the trial court? (Put only one case number here, even if it includes multiple counts. You must make a separate application on a separate form for other case numbers.)

0836979-A & 0836985-A

(4) What was the name of the trial judge?

Robert Keith Gill

- (5) Were you represented by counsel? If yes, provide the attorney's name:

Gregory Burke Westfall & Cheyenne Billy Minick,

- (6) What was the date that the judgment was entered?

12-12-02

- (7) For what offense were you convicted and what was the sentence?

Aggravated Robbery; Two Concurrent 35 years sentences

- (8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?

N/A

- (9) What was the plea you entered? (Check one.)

☒ guilty-open plea

☐ guilty-plea bargain

☐ not guilty

☐ *nolo contendere*/no contest

If you entered different pleas to counts in a multi-count indictment, please explain:

N/A

- (10) What kind of trial did you have?

☒ no jury

☐ jury for guilt and punishment

☐ jury for guilt, judge for punishment

But the jury did sentence me.

(11) Did you testify at trial? If yes, at what phase of the trial did you testify?

No. I was counseled against it.

(12) Has your sentence discharged? ☐ yes ☒ no

If you answered yes, when did your sentence discharge? _____

(13) Did you appeal from the judgment of conviction?

☒ yes

☐ no

If you did appeal, answer the following questions:

(A) Which court of appeals decided the appeal? Second District Court of Appeals of Texas

(B) What was the case number? 2-02-498-CR & 2-02-499-CR

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name: Paul Francis

(D) What was the decision and the date of the decision? Affirmed; 10-14-04

(14) Did you file a petition for discretionary review in the Court of Criminal Appeals?

☒ yes

☐ no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? PD-1787-04 & PD-1788-04

(B) What was the decision and the date of the decision? Denied

(15) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *the conviction in this case number*?

☒ yes

☐ no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? WR-69,338-01 & WR-69,338-02

(B) What was the decision and the date of the decision? Denied; 2-27-08

(C) Please briefly explain why the current grounds were not presented and could not have been presented in your previous application.

Westfall & Minick failed to keep applicant informed of important developments throughout the course of the prosecution; i.e., they kept important information from applicant, and infiltrated the prosecution of applicant's prior application.... After paroling applicant's sentences applicant was able to file a freedom of information act request and discovered the information they failed (concealed) to inform applicant.

(16) Do you currently have any petition or appeal pending in any other state or federal court?

☒ yes

☐ no

If you answered yes, please provide the name of the court and the case number:

United States District Court, Northern District of Texas, Fort Worth Division; 4:06-cv-409-Y

(17) If you are presenting a time credit claim, other than for pre-sentence jail time credit, have you exhausted your administrative remedies by presenting the time credit claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies.)

☐ yes

☐ no

If you answered yes, answer the following questions:

(A) What date did you present the claim to the time credit resolution system?

(B) Did you receive a decision and, if yes, what was the date of the decision?

If you answered no, please explain why you have not presented your time credit claim to the time credit resolution system of the Texas Department of Criminal Justice:

-
-
-
-
- (18) Beginning on page 6, state concisely every legal ground for why you think that you are being illegally confined or restrained and then briefly summarize the facts supporting each ground. You must present each ground and a brief summary of the facts on the application form. If your grounds and a brief summary of the facts have not been presented on the application form, the Court will not consider your grounds. A factual summary that merely references an attached memorandum or another ground for relief will not constitute a sufficient summary of the facts.

If you have more than four grounds, use pages 14 and 15 of the application form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.

You may include with the application form a memorandum of law if you want to present legal authorities or provide greater factual detail, but the Court will *not* consider grounds for relief set out in a memorandum of law that were not raised on the application form. The memorandum of law must comply with Texas Rule of Appellate Procedure 73 and must not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum of law.

If the application form does not include all of the grounds for relief, additional grounds brought at a later date may be procedurally barred.

GROUND ONE:

Applicant was denied the effective assistance of counsel.

FACTS SUPPORTING GROUND ONE:

Westfall and Minick failed to investigate when applicant went to Tiffani's mom's, and they failed to research the presumption of innocence as it pertained to the extraneous shooting at sentencing, consequently, the extraneous was used to prove applicant deserved more time than he otherwise deserved.

In fact, Westfall and Minick failed to keep applicant informed of important developments, namely, impeaching evidence impeaching the extraneous witnesses, throughout the course of the prosecution so that they could perpetuate a hoax upon the court, i.e., so that applicant could complain on appeal through their (Westfall's Minck's) friend (Wynn) Gill failed to charge the jury, sua sponte , on applicant's potential criminal responsibility for the extraneous, i.e., at least until an unexpected grievance was filed from an unexpected inmate (Tony Gregory) on Westfall, when the captain (Westfall and/or Minick) of the ship abandoned it and applicant, their unsuspecting lamb, went down with the it, i.e., applicant got stuck with a significantly increased or enhanced sentence than he otherwise would've

would have gotten.

Alternatively, Westfall and Minick actively represented conflicted loyalties: (a) Defend

applicant's innocence against respondent's accusations that he shot Rick, or (b) add another

legal-precedent trophy to their mantel or hall of fame; e.g.: (1) Wynn and Gill did it in Moore;

(2) Wynn and Hartmann did it in Bluitt; (3) Westfall did something similar in Burke; (4)

Westfall and his wife, Mollee Westfall, did something similar in Nickerson; (5) Westfall &

Kearney did something similar in Daugherty; (7) Wynn's wife, Shelia Wynn, and Wilkinson

did it in Ranger; (8) Wilkinson wrote about it in Grunsfeld, ten years later.

GROUND TWO: Applicant's restraint is unlawful, and his sentence invalid, in that he was denied the due process of the law at sentencing in violation of the Fourteenth Amendment to the United States Constitution

FACTS SUPPORTING GROUND TWO:

Respondent's expert (Fazio) in this case gave testimony that exceeded the limits of science. This mislead the jury by implying that the expert could identify scratches on a metal shaving recovered from the extraneous, to the exclusion of any contamination (extraneous scratches) to the scratches on an exemplar fired from the rifle in applicant's truck. Respondent "knew or should have known" the expert's testimony was false at the time of trial.

A series of 20 horizontal lines for writing, crossed out by a diagonal blue line.

This image shows a blank sheet of white paper with horizontal ruling lines. A single diagonal blue line runs from the top left corner towards the bottom right corner. The lines are evenly spaced and cover the entire page. There is no handwriting or other markings on the paper.

[The main body of the page contains 20 horizontal lines for writing, which are crossed out by a diagonal blue line.]

[illegible]

A series of 20 horizontal lines for writing, crossed out by a diagonal blue line.

This image shows a blank sheet of white paper with horizontal grey ruling lines. A single diagonal blue line runs from the top-left corner towards the bottom-right corner, intersecting the horizontal lines. The paper appears to be a template or a piece of stationery.

[The main body of the page contains 20 horizontal lines for writing, which are crossed out by a large diagonal line from the top-left to the bottom-right.]

WHEREFORE, I PRAY THAT THE COURT GRANT THE RELIEF TO WHICH APPLICANT MAY BE ENTITLED IN THIS PROCEEDING.

VERIFICATION

This application form *must be verified* in one of the following ways by either an applicant or a petitioner or it may be dismissed for noncompliance.

Applicants

In order to verify this application form, an applicant must sign one of the following:

- (1) the "Unsworn Declaration" for inmates (page 16) if applicant is an inmate; or
- (2) the "Unsworn Declaration" for non-inmates (page 17) if applicant is not an inmate; or
- (3) the "Oath Before a Notary Public" before a notary public (page 18).

Petitioners

If a petitioner, including an attorney, presents an application form on behalf of an applicant, the petitioner may verify the application form for the applicant. In order to verify this application form, a petitioner must sign one of the following:

- (1) the "Unsworn Declaration" for inmates (page 16) if petitioner is an inmate; or
- (2) the "Unsworn Declaration" for non-inmates (page 17) if petitioner is not an inmate; or
- (3) the "Oath Before a Notary Public" before a notary public (page 18).

In addition, *all petitioners*, including attorneys, presenting an application on behalf of an applicant must complete "Petitioner's Information" and sign "Petitioner's Statement" (page 19).

UNSWORN DECLARATION (INMATE)

My name is (First)_____ (Middle)_____ (Last)_____, my date of birth is _____, and my inmate identifying number, if any, is _____.

I am presently incarcerated in (Corrections unit name)_____ in (City) _____, (County)_____. (State) _____, (Zip Code)_____. I declare under penalty of perjury that the contents of this application for a

writ of habeas corpus and the facts stated in the application form are true and correct.

Executed on the _____ day of (Month)_____ (Year)_____.

Signature of Declarant: _____

UNSWORN DECLARATION (NON-INMATE)

My name is (First) _____ (Middle) _____ (Last) _____, my
date of birth is _____, and my address is (Street) _____
_____, (City) _____, (State) _____, (Zip
Code) _____, and (Country) _____. I declare under penalty of perjury that
the contents of this application for a writ of habeas corpus and the facts stated in the application form
are true and correct.

Executed in _____ County, State of _____, on the
_____ day of (Month) _____ (Year) _____.

Signature of Declarant: _____

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF Hood

Barton R. Gaines, being duly sworn, under oath says: "I am the applicant or petitioner in this action and know the contents of this application for a writ of habeas corpus and, according to my belief, the facts stated in the application form are true."

Signature of Declarant

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF _____, 20____.

Signature of Notary Public

PETITIONER'S INFORMATION

(Contact information for a petitioner presenting this application on behalf of the applicant)

Petitioner's printed name: Barton R. Gaines

State bar number, if applicable: N/A

Address: 244 Siesta Court
Granbury, Texas 76048

Telephone: 682-500-2753

Fax: N/A

Email Address: bartongaines@gmail.com

PETITIONER'S STATEMENT

"I am signing and presenting this application form on behalf of the applicant for the purpose of obtaining relief from the applicant's felony conviction. I have consulted with the applicant concerning this application and the applicant has given consent to the filing of this application form."

Signature of Petitioner

Signed on _____, 20____.