

Tim Curry Criminal Justice Center
Attn: Tarrant Co Dist Clerk: Tom Wilder
401 W. Belknap, Third Floor
Fort Worth, TX 76196
817-884-1342
webmaster@tarrantcounty.com

Re: Plaintiff's Original Petition For Bill Of Review & Request For Disclosure & Deposition
Case Nos.C-213-7907-0836979-A & C-213-7908-0836985-A

Date: 3-25-21

Please find enclosed:

1. Plaintiff's Original Petition For Bill Of Review & Request For disclosure
2. Exhibit 1: Order Adopting Andrea Jacob's proposed findings of fact and conclusions of law;
3. Exhibit 2: Daniel Aranda's Docket Sheet & Emails thereto;
4. Exhibit 3: Plaintiff's Affidavit;
5. Exhibit 4: Plaintiff's Initial Req. & defendant's response;
6. Exhibit 5: Defendant's itemized bill;;
7. Exhibit 6: Plaintiff's inquiry to less costly ways;
8. Exhibit 7: Defendant's AG withdrawal letter;
9. Exhibit 8: Payment for files & Inquiry
10. Exhibit 9: Inquiry as to delay;
11. Exhibit 10: Missing documents;
12. Exhibit 11: Inquiry as to delay; and
13. Exhibit 12: Inquiry about missing Walmart Video.
14. Exhibit 13: Habeas proceeding records in case numbers: Nos.C-213-W011921- 0836979-A & C-213-W011922-0836985-A; namely:Applicant Gaines's Application For Writ of Habeas Corpus;
 - a. Applicant Gaines's Appendix 1 attached to his Affidavit in support of his Application for Habeas Corpus;
 - b. Applicant Gaines's Appendix 2 attached to his Affidavit in support of his Application for Habeas Corpus;
 - c. Applicant Gaines's Appendix 3 attached to his Affidavit in support of his Application for Habeas Corpus;
 - d. Applicant Gaines's Appendix 4 attached to his Affidavit in support of his Application for Habeas Corpus;
 - e. Applicant Gaines's Appendix 5 attached to his Affidavit in support of his Application for Habeas Corpus;
 - f. Applicant Gaines's Appendix 6 attached to his Affidavit in support of his Application for Habeas Corpus; and
 - g. Applicant Gaines's Appendix 7 attached to his Affidavit in support of his Application for Habeas Corpus.

Please bring the same to the attention of the court.

Respectfully submitted,

By:_____
BARTON R. GAINES, Pro Se
244 Siesta Court
Granbury, Texas 76048
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EX PARTE	§	IN THE DISTRICT COURT
	§	TARRANT COUNTY, TEXAS
BARTON R. GAINES	§	213TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION FOR BILL OF REVIEW & REQUEST FOR DISCLOSURE

Plaintiff, Barton R. Gaines, files this original petition for bill of review and *request for disclosure* against defendant, the Tarrant County Criminal District Attorney's Office, and alleges as follows:

Discovery-Control Plan

1. Plaintiff intends to conduct discovery under *Level 3* of *Texas Rule of Civil Procedure* 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in *Texas Rule of Civil Procedure* 169 because the penalties here differ from the usual run-of-the-mill penalties, i.e., they include both fine and confinement.

Claim For Relief

2. Plaintiff seeks monetary relief of \$22,000 or less and non-monetary relief from his confinement. See *Tex. R. Civ. P. 47(c)(2)*.

Parties

3. Plaintiff, Barton R. Gaines, is an individual residing in Hood County at 244 Siesta Court, Granbury, Texas 76048.
4. Defendant, Sharen Wilson, an individual, may be served with process at defendant's usual place of business in Tarrant County at 401 W. Belknap St., Ft. Worth, Texas 76196, or wherever defendant may be found. See *Tex. R. Civ. P. 106*.

Jurisdiction

5. This bill of review is filed, in the same court that rendered the judgment challenged by this bill of review, after the residual four-year statute of limitations because plaintiff was prevented by defendant's extrinsic fraud from filing earlier. Specifically, Greg Westfall's wife, Mollee Westfall, who (Mollee Westfall) worked for the Tarrant County Criminal District Attorney's Office at the time, moved to revoke, and did revoke, plaintiff's co-defendant's, in trial-1 (jury trial), probation as a means to motivate him to testify against plaintiff in an extraneous accusation in trial-2 (the bench-trial / habeas trial), which caused plaintiff's counsel in trial-2 to abort any and all claims having to do with the extraneous, including arguments that plaintiff didn't commit the extraneous, and that the only reason Greg Westfall argued he did in trial-1 was so that he could create and argue on plaintiff's appeal from trial-1 that the trial judge in trial-1 failed to *sua sponte* charge the jury on the law applicable to the case, namely, *criminal responsibility*.¹

Facts

6. On 11-1-06 plaintiff sued defendant in this Court in case number C-213-7907-0836979-A & C-213-7908-0836985-A, *Ex parte Barton R. Gaines*, for unlawful fine and confinement.
7. On 1-30-08, a judgment was rendered against plaintiff. A copy of the judgment is attached as Exhibit 1 and incorporated by reference. .

¹ If the defendant-petitioner can show extrinsic fraud the 4-year statute of limitations is tolled. *PNS Stores*, 379 S.W.3d at 275; see *Temple v. Archambo*, 161 S.W.3d 217, 223-24 (Tex.App.--Corpus Christi 2005, no pet.); *Law v. Law*, 792 S.W.2d 150, 153 (Tex. App.--Houston [1st Dist.] 1990, writ denied). Extrinsic fraud is wrongful conduct outside the trial — such as keeping a party away from court or making false promises of compromise — that prevents the losing party from fully litigating rights defenses and prevents a real trial on issues involved. *Temple*, 161 S.W.3d at 224; see, e.g., *PNS Stores*, 379 S.W.3d at 275-276 (evidence of extrinsic fraud shown when Plaintiff's attorney did not comply with Texas Rules of Civil procedure to 239a; he provided clerk with address of defendants registered agent rather than defendants last known address which he knew); see also *Alexander v. Hagedorn*, 226 S.W.2d 996, 1002 (Tex.1950)(bill of review not proper because false testimony on element of cause of action was intrinsic fraud). Although evidence of extrinsic fraud tolls 4-year statute of limitations it does not do so indefinitely — the limitations. Begins to run when the defendant-petitioner knew or should have known about the default judgment. *PNS Stores*, 379 S.W.3d at 277 n.16.

8. On 2-21-21 plaintiff also sued defendant in this Court in case number Case Nos.C-213-W011921-0836979-A & C-213-W011922-0836985-A, *Ex parte Barton R. Gaines*, for unlawful fine and confinement, but the Magistrate Judge that case was transferred to erroneously concluded therein that the same was in violation of *section four* of the *Texas Code of Criminal Procedure*, Art. 11.07, which is currently under review before the Criminal Court of Appeals. A copy of the files therein is attached as Exhibit 1 and incorporated by reference.

Bill-of-Review Standard

9. To succeed on a bill of review, the plaintiff usually must plead and prove:
- A meritorious defense to the underlying cause of action,
 - Which plaintiff was prevented from making by the opposing party's fraud, accident, or wrongful conduct or official mistake,
 - Unmixed with any fault or negligence on plaintiff's own part.²

When a bill-of-review plaintiff claims a due process violation for no service or notice of the trial or default judgment, the plaintiff is relieved from proving the first two elements--a meritorious defense and wrongful conduct or official mistake--and must prove only the third element--no fault or negligence on the plaintiff's part contributed to the lack of service or notice.³

10. The judgment in case number C-213-7907-0836979-A & C-213-7908-0836985-A was rendered against plaintiff as the result of fraud or a wrongful act by defendant. Specifically, as stated above, Greg Westfall's wife, Mollee Westfall, who (Mollee Westfall) worked for the Tarrant County Criminal District Attorney's Office at the time,

² *Mabon Ltd. v. Afri-Carib Enters., Inc.*, 369 S.W.3d 809, 812 (Tex. 2012).

³ *Katy Venture, Ltd. v. Cremona Bistro Corp.*, 469 S.W.3d 160, 164 (Tex. 2015); see *Mabon Ltd.*, 369 S.W.3d at 812; *Caldwell v. Barnes*, 154 S.W.3d 93, 96-97 (Tex. 2004).

moved to revoke, and did revoke, plaintiff's co-defendant's (Daniel Aranda's), in trial-1 (punishment trial), probation as a means to motivate him to testify against plaintiff in an extraneous accusation in trial-2 (the bench-trial / habeas trial),⁴ which caused plaintiff's counsel (M. Michael Mowla), *unknown why to plaintiff*, in trial-2:

- a. to abort any and all claims having to do with the extraneous.⁵
- b. Take up Daniel's case to evidently keep defendant from moving forward with the extraneous accusations, which evidently caused him (Mowla) to abort any and all claims having to do with the extraneous.⁶

In support, the affidavit of Barton R. Gaines is attached as Exhibit 3 and incorporated by reference.

11. Plaintiff's inability to prevent the entry of the judgment in trial-2 was not the result of any fault or negligence of plaintiff. Plaintiff exercised due diligence but did not learn of the reason why Mowla refused to address the extraneous accusations until the deadline for appeal and motion for new trial had passed. Specifically, because, until recently when plaintiff made parole on the robbery conviction and defendant was no longer able to deny plaintiff his *freedom of information act request*, defendant denied any attempt, under § 552.028 of the Texas Government Code, and in violation of the *Michael Morton Act* codified at Art. 39.14(h & k) of the *Texas Code of Criminal Procedure*, plaintiff made toward eventual and inadvertent discovery of the reason why Mowla refused to argue **the timeline (i.e., "commit") and charge error**. In support, the affidavit of Barton R. Gaines is attached as Exhibit 3 and incorporated by reference.

⁴ A copy of the judgment is attached as Exhibit 2 and incorporated by reference.

⁵ See *Lambert v. Coachmen Indus., Inc.*, 761 S.W.2d 82, 86-86 (Tex. App.--Houston [14th Dist.] 1988, writ denied)

⁶ Including arguments that plaintiff didn't commit the extraneous, and that the only reason Greg Westfall argued he did in trial-1 was so that he could create and argue on plaintiff's appeal from trial-1 that the trial judge in trial-1 failed to *sua sponte* charge the jury on the law applicable to the case, namely, *criminal responsibility*.

12. Plaintiff has a meritorious defense to defendant's suit for aggravated robbery. In aggravation of his punishment therefor, defendant padded their file and accused plaintiff of an unadjudicated extraneous shooting. Plaintiff's trial attorney (Greg Westfall) in trial-1 forced defendant to accuse plaintiff of the extraneous shooting at punishment, as opposed to the guilt-innocence phase defendant (Hartmann) desired, for the sole purpose of setting precedent with plaintiff's case, without consulting plaintiff, only to turn around and abandon this endeavor through his conspirators,⁷ after Tony Gregory, a jailhouse lawyer, filed a state bar grievance on him (Greg Westfall) through plaintiff, then he (Greg Westfall) and his conspirator (the trial judge in trial-1) evidently convinced Francis and Mowla not to argue the same thereto. In support, the affidavit of Barton R. Gaines is attached as Exhibit 3 and incorporated by reference.

Request for Disclosure

13. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant discloses, within 50 days of the service of this request, the information, or material described in Rule 194.2.

Objection to Associate Judge

14. Plaintiff objects to the referral of this case to an associate judge for hearing a trial on the merits or presiding at a jury trial.

⁷ That is, the trial judge in trial-1 and the appeal attorneys, W. Regan Wynn, whom he specifically had the trial judge in trial-1 appoint plaintiff for his direct appeal from trial-1 and Paul Francis, whom the trial judge in trial-1 appointed plaintiff in place of Wynn.

Prayer

15. For these reasons, plaintiff asks the Court to do the following:

- a. Vacate the judgment in case number C-213-7907-0836979-A & C-213-7908-0836985-A, *Ex parte Barton R. Gaines*.
- b. *Reopen* cause number C-213-7907-0836979-A & C-213-7908-0836985-A and grant a new trial.
- c. After a hearing, render a judgment in case number C-213-7907-0836979-A & C-213-7908-0836985-A that defendant takes nothing.
- d. Assess costs against defendant.
- e. Award plaintiff all other relief to which plaintiff is entitled.

Respectfully submitted,

By: _____
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