

IN THE 242ND DISTRICT COURT OF SWISHER COUNTY, TEXAS
and
IN THE COURT OF CRIMINAL APPEALS, AUSTIN, TEXAS

JASON JEROME WILLIAMS,)	
)	
Applicant,)	Nos. 51,824 – 01, -02, -03, -04
)	
v.)	(Trial Court Cause Nos.
)	B-3340-9907-CR, B-3341-9907-CR,
)	B-3342-9907-CR, B-3356-9908-CR)
)	
STATE OF TEXAS,)	
)	
Respondent.)	
)	

MOTION FOR HEARING ON
ALL APPLICATIONS TO TAKE DEPOSITIONS FILED ON OCTOBER 25, 2002

JASON JEROME WILLIAMS, an indigent prisoner now incarcerated in the Roach Unit of the Texas Department of Corrections in Childress, Texas, by and through counsel, respectfully requests that this Court hold a hearing on all Applications to Take Depositions filed on October 25, 2002, pursuant to Art. 39.02, Tex. C. Crim. Proc.

1. Mr. Williams filed an Application for Writ of Habeas Corpus with the Swisher County Court on January 7, 2002. He then filed a Motion for Discovery on January 29, 2002, and a Motion for Evidentiary Hearing on February 1, 2002. His Application was transferred to the Court of Criminal Appeals on February 22, 2002. The District Attorney made no response to any of the claims presented in Mr. Williams’s Application. He also made no opposition to any of the motions filed in conjunction with his Application. Furthermore, the District Court took no action on Mr. Williams’ discovery or evidentiary hearing motions.

2. On October 6, 2002, Mr. Williams's counsel received notice that this Court remanded, on September 25, 2002, three of Mr. Williams's cases, Writ No. 51,824-01 (Trial Court Cause No. B-3341-99-07-CR), Writ No. 51,824-03 (Trial Court Cause No. B-3356-99-08-CR), Writ No. 51,824-04 (Trial Court Cause No. B-3342-99-07-CR) for an evidentiary hearing in the convicting court because this Court "believe[s] that Applicant has alleged facts which, if true, might entitle him to relief" and that "additional facts need to be developed." *See* Court Order (Sept. 25, 2002) at 1. The Court of Criminal Appeals of Texas expressly directed this Court to "develop . . . additional facts" and enter findings of fact and conclusions of law within 90 days.

3. On October 25, 2002, Mr. Williams filed separate Applications to Take Depositions of Tom Coleman, District Attorney Terry McEachern, Commander Michael Amos, Sergeant Jerry Massengill, Sheriff Larry Stewart, Linda Swanson, Sheriff Kenneth Burke, and James Collier Adams.

4. Art. 39.02, Tex. C. Crim. Proc. states that "the courts *shall* hear the application and determine if good reason exists for taking the deposition." (Emphasis added). Principles of statutory interpretation instruct that the word "may" is usually precatory, and the word "shall" is usually mandatory. *See Mallard v. United States District Court for the Southern District of Iowa, et al.*, 490 U.S. 296, 301-02 (1989). Indeed, the Texas Court of Criminal Appeals goes further, and states that "[t]he terms 'must' and 'shall' are synonymous and are usually mandatory when used in statutes." *Sodipo v. State*, 815 S.W.2d 551, 553-54 (Tex. Crim. App. 1990). According to Art. 39.02, Tex. C. Crim. Proc., canons of statutory interpretation, and other Texas law, a hearing on the Applications filed is mandatory.

WHEREFORE Mr. Williams requests that this Court hold a hearing on all Applications to Take Depositions filed on October 25, 2002, pursuant to Art. 39.02, Tex. C. Crim. Proc.

Respectfully submitted,

ELAINE R. JONES
Director-Counsel

George H. Kendall
Vanita Gupta
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson St., 16th Floor
New York, NY 10013
(212) 965-2239

Jeff Blackburn
Attorney at Law
SBOT# 02385400
718 W. 16th St.
Amarillo, TX 79102