

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. Article 11.07(3)(d) of the Texas Code of Criminal Procedure permits the Court to order affidavits, depositions, interrogatories, and to conduct formal hearings. The Order itself suggests that this Court should allow, among other things, "depositions" because "additional facts need to be developed" here. *See* Court Order (Sept. 25, 2002) at 2; *see also id.* at 3 (noting that supplemental transcript should contain "the transcription of the court reporter's notes from any hearing[s] or deposition[s]"). Indeed, the United States Supreme Court has held that courts must "provide the necessary facilities and procedures for an adequate inquiry" if an applicant presents allegations that may, if fully developed, demonstrate that he is confined illegally. Harris v. Nelson, 394 U.S. 286, 290 (1969). The Order expressly concludes that Mr. Williams's habeas application "allege[s] facts which, if true, might entitle him to relief." *See* Court Order (Sept. 25, 2002) at 2.

4. In support of this application and pursuant to Tex. C. Crim. Proc. Art. 39.02, Mr. Williams shows the following good reasons to take the deposition:

- (A) The Sheriff is a witness and party in interest in Mr. Williams's case;
- (B) The formal setting of a deposition where Mr. Williams's counsel can take testimony under oath is required in Mr. Williams's case;
- (C) A deposition of the District Attorney is required to comply with the Court of Criminal Appeals's Order for findings of fact regarding the following of Mr. Williams's claims:

- (1) "whether Officer Coleman's testimony concerning these offenses was corroborated by any other evidence";
- (2) "the nature of any such evidence";
- (3) "what alleged impeachment information concerning Coleman was known to the State at the time of trial"; and
- (4) "whether any of this alleged impeachment material was revealed to defense counsel before trial in these causes."

See Court Order (Sept. 25, 2002) at 2-3.

Further, given that the Court of Criminal Appeals has ordered this Court to "make any further findings of fact and conclusions of law which it deems relevant and appropriate to the disposition of Applicant's application for habeas corpus relief," *Id.* at 3, a deposition of the Sheriff is required to ascertain his knowledge and role in numerous other issues detailed in Mr. Williams's Application for Writ of Habeas Corpus. *See Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Bagley*, 473 U.S. 667 (1985).

(D) On October 10, 2002, the Amarillo Globe-News reported that Judge Self of this Court stated, in part, that “[t]he trial court can resolve the facts by ordering affidavits, sending written questions or conducting a hearing. I’m going with the affidavits first to see if we can get these questions answered.” Greg Cunningham, *Tulia Cases Returned to Trial Courts*, Amarillo Globe-News, Oct. 10, 2002, at 5C. In light of the fact that Judge Self has indicated, through comments to the press, that he does not intend to give Mr. Williams a hearing, a deposition of the Sheriff appears to be the only method now available to Mr. Williams to obtain live testimony from this key witness whose testimony is critical to compliance with the Court of Criminal Appeals's order.

5. 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).

WHEREFORE, Mr. Williams’s respectfully requests that this Court grant this application and order the deposition of Sheriff Stewart at a mutually-convenient time but before December 4, 2002 in Swisher County.

Respectfully submitted,

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