

IN THE
SUPREME COURT OF TEXAS

IN RE

GEORGE GLEN ABNEY,

RELATOR.

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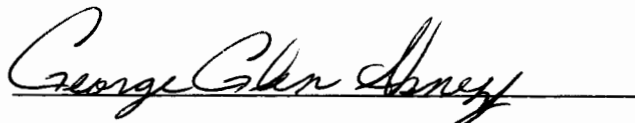
NO. _____

RELATOR'S MOTION FOR LEAVE TO
FILE PETITION FOR WRIT OF MANDAMUS

TO THE SUPREME COURT OF TEXAS:

George Glen Abney, Relator, respectfully moves the Court to file this petition for writ of mandamus which seeks to compel the Twelfth Court of Appeals, Respondent herein, to rule on Relator's motion to obtain court records at a cost of 10¢ per page, the cost set by this Court in its order, Appendix "A" to the Texas Rules of Appellate Procedure, reproduced at pages 428-29 of the Texas Rules of Court - State, 2010 Edition, by West Publishing. The Court of Appeals refused to rule on the motion after being specifically asked to do so. Leave to file a mandamus petition seeking to compel a ruling was then denied by the Court of Criminal Appeals, as shown by attached Exhibit H). Notice of this motion is given to the Court of Appeals by mailing them a copy of this motion and all attachments, as shown by the attached certificate of service.

Respectfully submitted,



GEORGE GLEN ABNEY 891960
ALLRED UNIT
2101 FM 369 N
IOWA PARK, TEXAS 76367-6568

IDENTITY OF PARTIES AND COUNSEL

Relator	George Glen Abney 891960 Allred Unit 2101 FM 369 N Iowa Park, Texas 76367-6568
Respondent	Twelfth Court of Appeals 1517 West Front Street, Suite 354 Tyler, Texas 75702
Real Parties In Interest	Hon. James T. Worthen Chief Justice Twelfth Court of Appeals 1517 West Front Street, Suite 354 Tyler, Texas 75702 Hon. Darcy Starcher Deputy Clerk Twelfth Court of Appeals 1517 West Front Street, Suite 354

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STATEMENT OF THE CASE

Before requesting relief from this Court, Relator requested it from the Court of Criminal Appeals but they declined leave to file, as shown by Exhibit H. All other Exhibits referred to below were also attached to the petition filed with the Court of Criminal Appeals, a copy of which are attached and incorporated herein by reference.

This petition seeks mandamus review of Respondent, Court of Appeals, refusal to rule on Relator's "Motion for Administrative Order Directing Clerk to Provide Copies of Appellate Record for 10¢ per Page, a copy of which is attached as Exhibit "A". Real party in interest, Deputy Clerk Darcy Starcher, a clerk of the Twelfth Court of Appeals, had originally returned that motion to Relator without filing it, as is shown by her letter dated Nov. 18, 2010, a copy of which is attached as Exhibit "B". Relator then submitted the motion to real party in interest, Chief Judge Worthen, by letter dated Nov. 23, 2010, a copy of which is attached, a copy of which is attached as Exhibit "C". This letter asked Judge Worthen to rule on Relator's motion. However, Clerk Starcher again returned the motion, as well as Judge Worthen's letter, with Starcher's letter dated Nov. 29, 2010, a copy of which is attached as Exhibit "D". This time, Starcher's letter underlined the words "No longer has jurisdiction." Compare Exhibit "B" to Exhibit "D". Because this underline was made in response to resubmission of the motion with a letter to Judge Worthen, Relator assumes the underline represents Judge Worthen's ruling that he had no jurisdiction to entertain the motion.

The motion at issue sought administrative enforcement of a Texas Supreme Court order governing fees which Clerks of Courts of Appeal can charge for copies of appellate records and limiting that charge to 10¢ a page for noncertified copies. See Exhibit "A". A copy of that Supreme Court order is not attached because one can not be obtained. However, the order is published as Appendix A to the Texas Rules of Appellate Procedure in West's Texas Rules of Court - State, 2010 Edition, West Publishing, pps. 428429. When Relator submitted his motion to Justice Worthen, another letter from Deputy Clerk Starcher was attached which indicated the records Relator was seeking would only be provided if payment of \$1.00 per page was made (less 50¢ per page for the first 50 pages of 964 pages total. See Exhibit "A", last page.

JURISDICTION

Art. V, Sec. 3, Texas Constitution, gives this Court power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said court and the justices thereof may issue the writs of mandamus, procedendo, certiorari as such other writs as may be necessary to enforce its jurisdiction.

Sec. 22.003(b) Texas Govt. Code provides that the Court "may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, for the government of the Supreme Court and all other courts of the state to expedite the dispatch of business in those courts."

Sec. 22.002 (a) Texas Govt. Code provides that "The Supreme Court or a justice of the supreme court may issue writs of ...

mandamus agreeable to the principles of law regulating those writs against ... a court of appeals or a justice of a court of appeals ...

The Court of Criminal Appeals has jurisdiction to issue writs of mandamus in all criminal law matters. State Ex Rel Millsap v. Lozano, 692 SW2d 470 (Tex.Cr.App. 1985). It could have issued the writ in aid of its habeas power. But because the underlying issue concerns enforcement of a Supreme Court order for fees and costs, it is a civil law matter more appropriately addressed to the Texas Supreme Court. See Johnson v. Tenth Court of Appeals, 280 SW3d 866, 869 (Tex.Cr.App. 2008); Harrell v. State, 286 SW3d 315,318 (Tex. 2009). The Court of Criminal Appeals declined to exercise its mandamus power. This Court has jurisdiction to do so.

ISSUE PRESENTED

The Court of Appeals abused its discretion by refusing to rule on Relator's motion.

STATEMENT OF THE FACTS

Relator was sentenced to consecutive life sentences for the crimes of aggravated sexual assault, imposed by the 145th District Court of Nacodoches County in cause nos. 8583-99-6 and 8584-99-6. Exhibit A, p. 3, Exhibit E. The appeal of those convictions was affirmed on August 31, 2000. George Glen Abney v. State, appeals nos. 12-99-00369-CR & 12-99-00370-CR (Tex. App. Tyler, unpublished) review refused. Before Relator's father passed away, he went to the Nacodoches County courthouse and attempted to purchase the records from the District Clerk but was informed that those records could not be found (Exhibit "A", p. 3).

A motion was made to the trial court to obtain copies of records in March of 2007, but that motion was denied (Exhibit "E"). Relator then sought to appeal that ruling, but his motion to appeal was returned to him by the Court of Appeals with a notation that the Court of Appeals did not have jurisdiction (Exhibit "F").

Relator then wrote a letter to the Clerk of the Court of Appeals asking for information about purchasing a copy of the records in issue. A copy of that letter is attached as Exhibit "G". Deputy Starcher wrote back in a letter dated Oct. 28, 2010 informing Relator there were 964 pages which would cost 50¢ per page for the first fifty pages and \$1.00 per page for remaining pages for a total cost of \$960.36. See letter of Deputy Starcher attached as Exhibit "A".

Relator then submitted to the Respondent, Twelfth Court of Appeals, a "Motion for Administrative Order Directing Clerk to Provide Copies of Appellate Record for 10¢ Per Page (Exhibit "A"). The motion pointed out that the cost for the records set by the Texas Supreme Court's fee order was 10¢ a page, that the records were needed to prepare a habeas corpus petition, and that Relator might become barred by laches from filing such a petition unless the motion was granted because Relator could not afford to pay \$960.36, but could persuade family or friends to pay the more moderate price of \$96.36, which would have been due under the Supreme Court's order, even if it meant doing without necessities which could be purchased out of the modest stipend his family gave him on a monthly basis for that purpose (Exhibit "A"). The motion sought administrative enforcement of the Supreme Court order limit-

ing fees that Court of Appeals clerks could charge for copies of appellate records in "civil cases" to 10¢ per page. See Texas Rules of Court - State, pps. 428-429 (2010 Edition, West Publishing), Rules of Appellate Procedure, Appendix "A", *supra*, and Exhibit "A" to this petition.

The motion was returned by Deputy Starcher by letter dated Nov. 18, 2010, purportedly because the Court lacked jurisdiction to act on it. (Exhibit "B"). Relator then resubmitted the motion with a letter to Judge Wothern specifically asking for a ruling on the motion (Exhibit "C"). Deputy Starcher again returned the motion by letter dated Nov. 29, 2010, with the words "no longerf has jurisdiction" underscored. (Exhibit "D"). Relator has no adequate remedy by appeal or otherwise, to obtain the needed records required to prepare his 11.07 petition for writ of habeas corpus.

ARGUMENT

The Texas Supreme Court's order governing fees to copy appellate records in civil cases arguably applies to the present case. See Section 22.003 (b), Texas Government Code, *supra*. (stating that this court has authority to create rules for all courts). Though the records at issue arose from a criminal trial and appeal, the record fee dispute at issue is obviously a civil one now that the conviction is final and the records Relator seeks to purchase are not incident to a direct criminal appeal. cf., Harrell and Johnson, *supra*. (post-conviction fee and cost matters are civil rather than criminal law matters).

The Respondent Court of Appeals clearly abused its discretion

by allowing the setting of an exorbitant fee for records which is far in excess of this Court's fee order, and then refusing to correct the amount due by ruling on Relator's motion. Respondent Court of Appeals should not have declined to consider the motion under the theory that it lacked jurisdiction. The Court of Appeals had administrative jurisdiction over the matter and should not have declined to exercise it. In re Nolo Press, 991 SW2d 768,776 (Tex. 1999); Texas Government Code, Section 22.108; Texas Rule of Appellate Procedure 1.2.

In O'Conner v. First Court of Appeals, 837 SW2d 94 (Tex. 1992) this Court held that mandamus would issue to require a court of appeals to direct a clerk to file a dissenting opinion where the Texas Rules of Appellate Procedure created a right to have the dissent filed. "Mandamus will issue when there is a legal duty to perform a nondiscretionary act, a demand for performance and a refusal," the Court held. Id. at 97. Because the rules similarly allow records to be purchased for 10¢ per page, the Court of Appeals should not have refused to follow them and its refusing to do so is comparable to the one found in O'Conner where mandamus was applied.

The Texas Supreme Court will compel filing of a submission or a ruling thereon which a court of appeals judge or clerk refuses to entertain. Roth v. Murray, 141 SW 515 (Tex. 1911); Simpson v. McDonald, 179 SW2d 239 (Tex. 1944). This Court will issue a writ of mandamus to compel a lower court ruling on a motion where necessary to remedy the lower court's circumvention of lawful pro-

cedure and to establish the necessity of a lower court ruling on motions to comply with that procedure. In re Union Carbide, Corp., 273 SW3d 152 (Tex. 2008). Though this Court could simply require compliance with its fee order, it would be more in keeping with mandamus law for the Court to instead require the Court of Appeals to act on Relator's motion.

Mandamus may issue to compel a trial court to rule on a motion which has been pending before the court for a reasonable period of time. See In re Hearn, 137 SW3d 681,685 (Tex.App. - San Antonio 2004, orig. proceeding); In re Keeter, 134 SW3d 250,252-253 (Tex.App. Waco 2003, orig. proceeding); In re Chavez, 62 SW3d 225,228 (Tex.App. Amarillo 2001, orig. proceeding); Barnes v. State, 832 SW2d 424,426 (Tex.App. Houston [1st Dist.] 1992, orig. proceeding); see also In re Shredder, Co., 225 SW3d 676,679 (Tex.App. El Paso 2006, orig. proceeding).

In re Sarkissian, 243 SW3d 860,861 (Tex.App. Waco 2008, orig. proceeding).

A trial court is required to consider and rule upon a motion within a reasonable time. Safety Kleen Corp. v. Garcia, 945 SW2d 268,269 (Tex.App. San Antonio 1997, orig. proceeding). When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act. Id.

In re Mendoza, 131 SW3d 167,167 (Tex.App. San Antonio 2004)(orig. proceeding). If a court of appeals may utilize its mandamus power to compel a trial court to rule on a properly filed motion, it should also be subject to this Court's mandamus oversight when it refuses to do its job in a similar fashion.

Without access to the records in question, Relator can not properly frame his habeas claims of ineffective counsel, denial of due process and habeas error. Cf. Ex parte White, 726 SW2d 149 (Tex.Cr.App. 1987)(rejecting habeas claim for lack of record argument).

In a fact situation similar to White, the Supreme Court of the united states held that hands on access to the habeas record in a state habeas proceeding is required where necessary to an effective state appeal. Gardner v. California, 393 U.S. 367, 369-70, 89 S.Ct. 580, 582, 21 L.Ed.2d 601 (1969). Without intervention by this Honorable Court, Relator is unable to obtain the record and properly prepare his petition and may thereby become barred by latches from ever obtaining relief to which he may be entitled (Exhibit "A", p.3). Respondent's refusal to act in compliance with this Court's lawful order amounts to a defacto "suspension" of the habeas writ which prohibits that remedy from becoming speedy and effective, contrary to Article I, Section 20, Texas Constitution.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Relator respectfully requests that a peremptory writ of mandamus issue, requiring Respondent to rule on Relator's motion.

Respectfully submitted,

A handwritten signature in cursive script, reading "George Glen Abney", is written over a horizontal line.

George Glen Abney 891960
Allred Unit
2101 FM 369 N
Iowa Park, Texas 76367-6568

CERTIFICATION

I, George Glen Abney, TDCJ 891960, being currently confined at the James V. Allred Unit in Wichita County, Texas, state that I have read and understand the contents of the foregoing application and declare the contents of same are true and correct and that every factual statement contained therein is supported by competent evidence included in the Exhibits attached thereto. I also state that the attached exhibits are true and correct copies of the originals and accurately reflect what they purport to be. I declare under penalty of perjury that the foregoing is true and correct. Executed on the 06th day of March, 2011.



GEORGE GLEN ABNEY

CERTIFICATE OF SERVICE

On the date indicated below, a copy of this petition and its previously unserved attachments were served on the following:

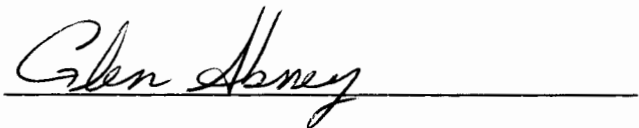
Hon. Chief Justice
James T. Worthen

Hon. Darcy Starcher
Deputy Clerk

Twelfth Court of
Appeals in Tyler

1517 West Front Street, Suite 354
Tyler, Texas 75702

by United States mail, first class postage prepaid, on the 06th day of March, 2011.



GEORGE GLEN ABNEY

IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS

IN RE

GEORGE GLEN ABNEY,

RELATOR.

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NO. _____

RELATOR'S MOTION FOR LEAVE TO FILE
PETITION FOR WRIT OF MANDAMUS

TO THE COURT OF CRIMINAL APPEALS OF TEXAS:

George Glen Abney, Relator, respectfully moves the Court to file this petition for writ of mandamus which seeks to compel the Honorable James T. Worthen, Chief Judge of the Twelfth Court of Appeals. who is Respondent herein, to rule on Relator's motion to obtain court records needed to prove and prepare his habeas claims. Notice of this motion has been given to the parties by mailing a copy with attachments to them, as shown in the certificate of service attached.

Respectfully submitted,



GEORGE GLEN ABNEY 891960
ALLRED UNIT
2101 FM 369 N
IOWA PARK, TEXAS 76367-6568

IDENTITY OF PARTIES AND COUNSEL

Relator	George Glen Abney 891960 Allred Unit 2101 FM 369 N Iowa Park, Texas 76367-6568
Respondent	Hon. James T. Worthen Chief Justice Twelfth Court of Appeals 1517 West Front Street, Suite 354 Tyler, Texas 75702
Real Party In Interest	Hon. Darcy Starcher Deputy Clerk Twelfth Court of Appeals 1517 West Front Street, Suite 354 Tyler, Texas 75702

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Exhibit B	Letter of Deputy Starcher 11/18/10
Exhibit C	Relator's letter to Respondent 11/23/10
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STATEMENT OF THE CASE

This petition seeks mandamus review of Respondent, Chief Justice of the Twelfth Court of Appeals, the Honorable James T. Worthen's refusal to rule on Relator's "Motion for Administrative Order Directing Clerk to Provide Copies of Appellate Record for 10¢ per Page," a copy of which is attached as Exhibit "A". Real party in interest, Deputy Clerk Darcy Starcher, a clerk of the Twelfth Court of Appeals, had originally returned that motion to Relator without filing it, as is shown by her letter dated Nov. 18, 2010, a copy of which is attached as Exhibit "B". Relator then resubmitted the motion to Respondent Worthen by letter dated Nov. 23, 2010, a copy of which is attached as Exhibit "C". This letter specifically asked Justice Worthen to rule on Relator's motion. However, Clerk Starcher again returned the motion, as well as Justice Worthen's letter, with Starcher's letter dated Nov. 29, 2010, a copy of which is attached as Exhibit "D". This time, Starcher's letter underlined the words "no longer has jurisdiction". Compare Exhibit "B" to Exhibit "D". Because this underline was made in response to resubmission of the motion with a letter to Justice Worthen, Relator assumes the underline represents Justice Worthen's ruling that he had no jurisdiction to entertain the motion. In any event, it was an abuse of discretion to refuse to rule on the motion, despite a specific request.

The motion at issue sought administrative enforcement of a Texas Supreme Court order governing fees which Clerks of Courts of Appeal can charge for copies of appellate records and limiting that charge to 10¢ a page for noncertified copies. See Exhibit "A". A

copy of that Supreme Court order is not attached because one can not be obtained. However, the order is published as Appendix A to the Texas Rules of Appellate Procedure - State, at pps. 428-429 (2010 Edition, West Publishing). When Relator submitted his motion to Justice Worthen, another letter from Deputy Clerk Starcher was attached which indicated the records Relator was seeking would only be provided if payment of \$1.00 per page was made (less 50¢ per page for the first 50 pages of 964 pages total). See Exhibit A, last page.

JURISDICTION

Because Relator's underlying request for records is made for the purpose of preparing an effective 11.07 habeas petition, the Court of Criminal Appeals has Art. V., Sec. 5 Jurisdiction under the Texas Constitution to issue the writ in aid of its habeas powers. The Court also has jurisdiction to review Justice Worthen and Clerk Starcher's actions under its administrative and rule making power. Cf. In re Nolo Press, 991 SW2d 768,776 (Tex. 1999); Tex. Govt. Code. Ann, §22.108; Tex. R. App. Proc. 1.2.

The Court of Criminal Appeals has jurisdiction to issue writs of mandamus in all criminal law matters, State Ex Rel Millsap v. Lozano, 692 SW2d 470 (Tex.Cr.App. 1985). But because the underlying issue concerns enforcement of an order for fees or costs, this Court may deem the issue involves a civil law matter, more appropriately addressed to the Texas Supreme Court. See Johnson v. Tenth Court of Appeals, 280 SW3d 866,869 (Tex.Cr.App. 2008); Harrell v. State, 286 SW3d 315,318 (Tex. 2009). That Court is unlikely to act unless this Court declines to do so.

ISSUE PRESENTED

Whether Respondent Worthen clearly abused his discretion by refusing to rule on Relator's motion.

STATEMENT OF THE FACTS

Relator was sentenced to consecutive life sentences for the crimes of aggravated sexual assault, imposed by the 145th District Court of Nacodoches County in cause nos. 8583-99-6 and 8584-99-6. Exhibit A, p. 3, Exhibit E. The appeal of those convictions was affirmed on August 31, 2000. George Glen Abney v. State, appeals nos. 12-99-00369-CR & 12-99-00370-CR (unpublished), review refused. Before Relator's father passed away, he went to the Nacodoches County courthouse and attempted to purchase the records from the District Clerk but was informed that those records could not be found (Exhibit "A", p. 3).

A motion was made to the trial court to obtain copies of records in March of 2007, but that motion was denied (Exhibit "E"). Relator then sought to appeal that ruling, but his motion to appeal was returned to him by the Court of Appeals with a notation that the Court of Appeals did not have jurisdiction (Exhibit "F").

Relator then wrote a letter to the Clerk of the Court of Appeals asking for information about purchasing a copy of the records in issue. A copy of that letter is attached as Exhibit "G". Deputy Starcher wrote back in a letter dated Oct. 28, 2010 informing Relator there were 964 pages which would cost 50¢ per page for the first fifty pages and \$1.00 per page for remaining pages for a total cost of \$960.36. See letter of Deputy Starcher attached to Exhibit "A".

Relator then submitted to the Twelfth Court of Appeals a "Motion for Administrative Order Directing Clerk to Provide Copies of Appellate Record for 10¢ Per Page" (Exhibit "A"). The motion pointed out that the cost for the records set by the Texas Supreme Court's fee order was 10¢ a page, that the records were needed to prepare a habeas corpus petition, and that Relator might become barred by laches from filing such a petition unless the motion was granted because Relator could not afford to pay \$960.36, but could persuade family or friends to pay the more moderate price of \$96.36 which would have been due under the Supreme Court's order, even if it meant doing without necessities which could be purchased out of the modest stipend his family gave him on a monthly basis for that purpose (Exhibit "A"). The motion sought administrative enforcement of the Supreme Court order limiting fees that Court of Appeal clerks could charge for copies of appellate records in "civil cases" to 10¢ per page. See Texas Rules of Court - State, pps. 428-429 (2010 Edition, West Publishing), Rules of Appellate Procedure, Appendix "A", supra, and Exhibit "A" to this petition.

The motion was returned by Deputy Starcher by letter dated Nov. 18, 2010, purportedly because the Court lacked jurisdiction to act on it. (Exhibit "B"). Relator then resubmitted the motion with a letter to Respondent Worthen specifically asking for a ruling on the motion (Exhibit "C"). Deputy Starcher again returned the motion by letter dated Nov. 29, 2010, with the words "no longer has jurisdiction" underscored. (Exhibit "D"). Relator has no adequate remedy by appeal or otherwise, to obtain the needed records needed to prepare his 11.07 petition.

ARGUMENT

The Texas Supreme Court's order governing fees to copy appellate records in civil cases arguably applies to the present case. Though the records at issue arose from a criminal trial and appeal, the record fee dispute at issue is obviously a civil one now that the conviction is final and the records Relator seeks to purchase are not incident to a direct criminal appeal. Even so, because these records are needed to effectively prepare an 11.07 habeas application, this Court has Art. V, Sec. 5 mandamus jurisdiction which it may exercise in the present case in aid of its habeas jurisdiction. In re Escareno, 297 SW3d 288 (Tex.Cr.App. 2009).

Respondent Worthen clearly abused his discretion by refusing to rule on the motion and this Court needs to review that ruling. Ex parte Florence, 319 SW3d 695 (Tex.Cr.App. 2010)(remedy for Court of Appeals refusal to act on motion is mandamus petition in Court of Criminal Appeals, not habeas corpus). A petition for writ of mandamus is an appropriate remedy to compel a lower court to rule on a motion. In re Newby, 280 SW3d 298 (Tex.App. Amarillo 2007); In re Altschul, 238 SW3d 603 (Tex.App. Waco 2007); In re Shaw, 175 SW3d 901 (Tex.App. Texarkana 2005); In re Mendoza, 131 SW3d 167 (Tex.App. San Antonio 2004). The Relator must first ask the lower court to rule on the motion and allow a reasonable amount of time for that court to act. In Re Layton, 257 SW3d 794 (Tex.App. Amarillo 2008); In re Sakissian, 243 SW3d 860 (Tex.App. Waco 2008); In re Davidson, 153 SW3d 490 (Tex.App. Amarillo 2004).

Relator made such a request in the present case, but Respondent Worthen refused to rule on the motion and instead directed

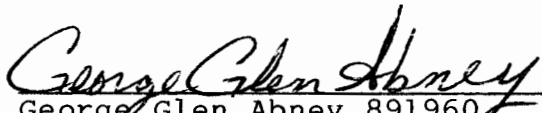
Real Party in Interest Starcher not to file the motion and it was returned without a ruling. This was a clear abuse of discretion for which Relator lacks an adequate remedy at law, either by appeal, habeas corpus or other means.

Without access to the records in question, Relator can not properly frame his habeas claims of ineffective counsel, denial of due process and habeas error. Cf Ex parte White, 726 SW3d 149 (Tex.Cr.App. 1987)(rejecting habeas claim for lack of record argument). The Supreme Court of the United States has held that hands on access to the habeas record in a state habeas proceeding is required where necessary to an effective state appeal. Gardner v. California, 393 U.S. 367,369-370, 89 S.Ct. 580,582, 21 L.Ed.2d 601 (1969). Without intervention by this Honorable Court, Relator is unable to obtain the record and properly prepare his petition and may thereby become barred by laches from ever obtaining relief to which he may be entitled. (Exhibit "A", p. 3). Respondent's actions amount to a defact "suspension" of the habeas writ which prohibits that remedy from becoming speedy and effective. Art. I, Sec. 20 Tex. Constitution.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Relator respectfully requests that a peremptory writ of mandamus issue, requiring Respondent Worthen to rule on Relator's motion.

Respectfully submitted,


George Glen Abney 891960
2101 FM 369 N - Allred Unit
Iowa Park, Texas 76367-6568

CERTIFICATION

I, George Glen Abney, TDCJ 891960, being currently confined at the James V. Allred Unit in Wichita County, Texas, state that I have read and understand the contents of the foregoing application and declare the contents of same and true and correct and that every factual statement contained therein is supported by competent evidence included in the Exhibits attached hereto. I also state that the attached exhibits are true and correct copies of the originals and accurately reflect what they purport to be. I declare under penalty of perjury that the foregoing is true and correct. Executed on the 10 day of January, 2010.



GEORGE GLEN ABNEY

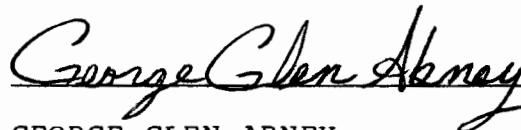
CERTIFICATE OF SERVICE

On the date indicated below, a copy of this petition and its attached exhibits were served on the following:

Hon. Chief Justice
James T. Worthen
Twelfth Court of Appeals
1517 West Front Street
Suite 354
Tyler, Texas 75702

Hon. Darcy Starcher
Deputy Clerk
Twelfth Court of Appeals
1517 West Front Street
Suite 354
Tyler, Texas 75702

by United States mail, first class postage prepaid, on the 10 day of January, 2010.



GEORGE GLEN ABNEY

IN THE COURT OF APPEALS
FOR THE TWELFTH DISTRICT OF TEXAS
IN TYLER, TEXAS

GEORGE GLEN ABNEY,
APPELLANT,

VS.

THE STATE OF TEXAS,
APPELLEE.

§
§
§
§
§
§

NO. 12-99-00369-CR

NO. 12-99-00370-CR

MOTION FOR ADMINISTRATIVE ORDER DIRECTING CLERK
TO PROVIDE COPIES OF APPELLATE RECORD FOR 10¢ PER PAGE

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW GEORGE GLEN ABNEY, the Appellant in the above styled and numbered cause and moves this Court to administratively order the Clerk to provide him with copies of documents related to the appeal in the above cases at a cost of 10¢ per page. In support of this motion, Appellant would show the following:

I.

Appellant is unable to afford to purchase said records at the cost of \$960.36 (at a rate of one dollar per page, etc.) as quoted by the Clerk and as shown by attached Exhibit A.

II.

Appendix "A", Texas Rules of Appellate Procedure (Texas Supreme Court Order Regarding Charges in Civil Cases, Section E (2), published in West's Texas Rules of Court - State, 2009, at p. 419) provides that Court of Appeal Clerks may charge 10¢ per page for standard paper copies of such records in civil cases.

III.

These records are needed to prepare and file a petition for writ of habeas corpus. See Exhibit A. Cf. Gardner v. Calif-

EXHIBIT "A"

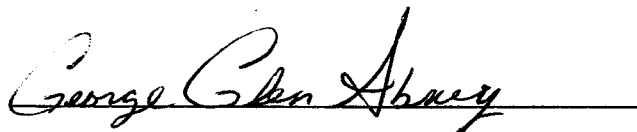
ornia, 393 U.S. 367,369-70, 89 S.Ct. 580,582, 21 L.Ed.2d 601 (1969)(State courts must provide hands on access to appellate record to pro se, indigent prisoner, where necessary to effective state habeas corpus appeal); Ex parte White, 726 SW2d 149 (Tex. Cr.App. 1987)(rejecting habeas claim for lack of record argument or support).

IV.

This Court has administrative jurisdiction to order the relief requested. See In re Nolo Press, 991 SW2d 768,777-778 (Tex. 1999)(discussing exercise of administrative jurisdiction to provide access to records). See also Johnson v. Tenth Court of Appeal 280 SW3d 866,868 (Tex.Cr.App. 2008)(finding post-judgment proceeding to enforce costs is a civil law matter).

WHEREFORE, PREMISES CONSIDERED, Appellant prays this Honorable Court will grant his request and order the Clerk to provide him with access to the appellate records at a cost of 10¢ per page.

Respectfully submitted,

A handwritten signature in cursive script, reading "George Glen Abney", is written over a horizontal line.

George Glen Abney 891960
Allred Unit
2101 FM 369 N.
Iowa Park, Texas 76367-6568

EXHIBIT "A"

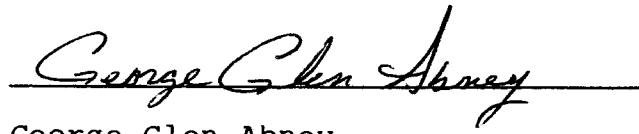
My name is George Glen Abney and I am the appellant in State v. Abney, appeal nos. 12-99-00369-CR & 12-99-00370-CR wherein I was sentenced to two consecutive life sentences for the crime of aggravated sexual assault. After my appeals were disposed of, I applied to this Court for a free copy of the record on appeal because I was indigent, but the Clerk refused my request because the conviction had been affirmed and jurisdiction was thought to be lacking. I was told to ask the District Clerk for the record, but when my father went there asking for the records before he passed away, he was told they could not be found.

At present, I receive \$30.00 permonth from friends or family to purchase stamps, envelopes, deoderant, soap, toothpaste and other necessities. When I wrote the Clerk of this Court asking to purchase a copy of the record, I received back the attached letter informing me the cost for providing a copy would be \$960.36. I am unable to afford this amount due to my indigency. Even if I did without basic necessities completely, it would take many years to save up enough money to pay the Clerk this amount since my account is automatically debited 20% of whatever is placed in it because of a federal court payment order. Additionally, the prison also deducted a \$3.00 copayment and costs for indigent postage or paper when requested. My financial benefactor is unwilling to supply the \$960.36 needed to purchase the record.

I believe I have good grounds for habeas corpus relief based on ineffective assistance of counsel but need the record to properly argue and prove my claims.

Reducing the cost of the record to the amount prescribed by Supreme Court rules (10¢ per page) would make it feasible to buy the record, either by having a friend or relative purchase it at a cost of aprox. \$96.00 or else saving up that amount of money from donations to my account, probably in less than one year. Without the requested relief, I will be unable to prepare and file a proper 11.07 application and may become barred from doing so under the doctrine of laches.

I, George Glen Abney, TDCJ 891960, being currently confined at the Allred Unit in Wichita County, Texas, declare under penalty of perjury that the foregoing is true and correct. Executed on the 15th day of November, 2010.


George Glen Abney

CHIEF JUSTICE
JAMES T. WORTHEN

RECEIVED

OCT 28 2010

CLERK
CATHY S. LUSK

JUSTICES
S. J. GARNETT
J. R. HALE

TWELFTH COURT OF APPEALS

CHIEF STAFF ATTORNEY

Thursday, October 28, 2010

George Glen Abney
#891960
2101 FM 369 N.
Alfred Unit
Iowa Park, TX 76367

RE: Case Numbers: 12-99-00349-CR & 12-99-00370-CR
Trial Court Case Numbers: 8583-99-6 & 8584-99-6

Style: George Glen Abney
v.
The State of Texas

This is to acknowledge receipt of your communication dated October 25, 2010.

In response to your inquiries, please be advised that:

1. You have requested a copy of the following documents filed in the above-referenced cases: the Clerk's and Reporter's Records, the Appellant's and the State's Briefs, the Appellant's Motion for Rehearing and the Court's Order on Motion for Rehearing, the Appellant's Petition for Discretionary Review, this Court's Opinion and Judgment and the Appellant's Pro Se correspondence with this Court. You are advised that this Court charges for copies of stored records (\$.50 per page for the first 50 pages, then \$1.00 per page for the remaining pages) plus the cost for postage. You are advised that there are a total of 964 pages contained in the above-mentioned documents. In order to receive a copy of said documents, please forward a check or money order in the amount of \$960.36.
2. You are advised that this Court does not provide copies of documents without prepayment of costs. This Court has no jurisdiction to compel the trial court to provide you with free copies of any of your trial records. Payment must be made in advance by cash, cashier's check, or money order.

Very truly yours,

CATHY S. LUSK, CLERK

By: Dorcy Starcher
Dorcy Starcher, Deputy Clerk

CHIEF JUSTICE
JAMES T. WORTHEN

JUSTICES
SAM GRIFFITH
BRIAN HOYLE



TWELFTH COURT OF APPEALS

CLERK
CATHY S. LUSK

CHIEF STAFF ATTORNEY

Thursday, November 18, 2010

George Glen Abney
#891960
2101 FM 369 N.
Allred Unit
Iowa Park, TX 76367

RE: Case Numbers: 12-99-00369-CR & 12-99-00370-CR
Trial Court Case Numbers: 8583-99-6 & 8584-99-6

Style: George Glen Abney
v.
The State of Texas

Appellant's Pro Se Motion for Administrative Order Directing Clerk to Provide Copies of Appellate Record for \$.10 Per Page in the above styled and numbered cases has this day been received.

NOTICE: The mandate in the above styled cases was issued on March 22, 2001. Therefore, this Court no longer has jurisdiction over your appeals. I am returning your motion to you.

Very truly yours,

CATHY S. LUSK, CLERK

By: Darcy Starcher
Darcy Starcher, Deputy Clerk

EXHIBIT "B"

George Glen Abney # 891960
2101 FM 369 N. Allred Unit
Iowa Park, Texas 76367-6568

March 26 th, 2007

Re: Court of Appeals Number: 12-99-00369-CR
12-99-00370-CR
Trial Court Case Number: 8583-99-6
8584-99-6

Style : Abney, George Glen
v.
The State of Texas

Dear Ms. Lusk:

Please find enclosed original and one copy of Appeal of Courts denial of Petitioners Motion for Court Records at Countys expense to be filed in the above entitled and numbered cause.

Your courtesies in this matter are appreciated.

Yours very truly,



G. Glen Abney

~~ENCLOSURE~~
~~ENCLOSURE~~
~~ENCLOSURE~~

Ex Parte

§

COURT OF APPEALS

GEORGE GLEN ABNEY

§

TWELFTH DISTRICT OF TEXAS

§

SMITH COUNTY TYLER, TEXAS

§

Appeal of Courts denial of Pettitioners Motionfor
Court Records at Countys Expense

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW George Glen Abney Pettitioner, Pro Se, and files this Appeal of Courts denial of Pettitioners Motion for Court Records at Counttys expense. And would show this Honorable Court as follows:

I.

INDIGENCY

Petitioner has filed in the above styled and numbered cause an IN FORMA PAUPRIS claiming his indigency, and to show said indigent status Petitioner has provided said Court with Texas Department of Criminal Justice I.D. monthly statements for the past six months.

Clearly these monthly statements show continuing indigency and Petitioner has no means by which to obtain copies of his Court Records. Petitioners further argues those records are needed to start Writ proceedings.

II.

ENTITLEMENT

Petitioner has shown his need of Court Records by filing said motion. And the ends of Justice shall not be met. And Petitioner argues, and urges, this Court to review the (CAMERON v. LeFEVRE, 887 F. Supp. 425 (E.D. N.Y. 1995)): " Pursuant to the United States Constitution, a state has an obligation 'to provide trial transcripts, to appellants who are unable to pay for them.' Ennis v. LeFevre, 560 F.2d 1072, 1074 (2d Cir. 1977) and Griffin v. Illinois, 351 U.S. 12, 19 (1956)."

" A transcript must afford 'a record of sufficient completeness to permit proper consideration of (an indigent's) claim.'"

PRAYER

WHEREFORE PREMISES considered, the Petitioner prays that this Honorable Court will review the agreed Motion for Trial Court Records at Countys Expense. And grant Petitioners with the requested Court Records.

Nov. 23, 2010

Hon. James T. Worthen
Chief Judge
Twelfth Court of Appeals
1517 West Front Street, Suite 354
Tyler, Texas 75702

Re: Motion to the court to purchase records in appeal nos.
12-99-00369-CR & 12-99-00370-CR for 10¢ per page.

Dear Judge Worthen,

On Nov. 15, 2010, I mailed the enclosed motion to the clerk of your court seeking to purchase copies of all records related to my appeal for the fee set by the Texas Supreme Court, 10¢ per page. See Texas Rules of Court - State (2010) Appendix A to Texas Rules of Appellate Procedure at p. 428-429 (publishing Texas Supreme Court fee order and prescribing 10¢ per page fee that can be charged for records by a court of appeals clerk). The Clerk had instead wanted to charge me \$1.00 per page, which I can not afford for reasons explained in my affidavit supporting the motion. The Clerk refused to file my motion and instead returned it to me with a letter signed by deputy clerk Starcher dated Nov. 18, 2010 saying "this Court no longer has jurisdiction over your appeals. I am returning your motion to you."

Please rule on my motion. My motion involves a post-criminal judgment civil law matter. Cf. Johnson v. Tenth Court of Appeals, 280 SW3d 866,869-872 (Tex.Cr.App. 2008)(enforcement of post-criminal judgment order for costs is civil law matter). It only seeks enforcement of the Texas Supreme Court's fee order and does not attack the validity of the conviction, confinement or appeal. You have administrative jurisdiction over your clerk who serves as an officer of your court.

I request that my motion be granted or otherwise ruled on so that I can seek review of that ruling in a higher court. Thank you very much in advance for your consideration.

Sincerely,

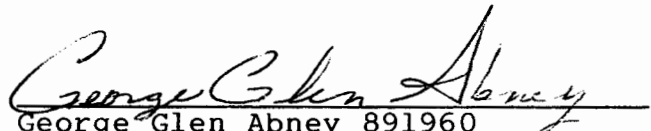

George Glen Abney 891960
Allred Unit
2101 FM 369 N
Iowa Park, Texas 76367-6568

EXHIBIT "C"

CHIEF JUSTICE
JAMES T. WORTHEN



CLERK
CATHY S. LUSK

JUSTICES
SAM GRIFFITH
BRIAN HOYLE

TWELFTH COURT OF APPEALS

CHIEF STAFF ATTORNEY

Monday, November 29, 2010

George Glen Abney
#891960
2101 FM 369 N.
Allred Unit
Iowa Park, TX 76367

RE: Case Numbers: 12-99-00369-CR & 12-99-00370-CR
Trial Court Case Numbers: 8583-99-6 & 8584-99-6

Style: George Glen Abney
v.
The State of Texas

Appellant's Pro Se Motion for Administrative Order Directing Clerk to Provide Copies of Appellate Record for \$.10 Per Page in the above styled and numbered case has this day been received.

NOTICE: The mandate in the above styled cases was issued on March 22, 2010. You are advised this Court no longer has jurisdiction over your appeals. Therefore, I am returning your motion to you.

Very truly yours,

CATHY S. LUSK, CLERK

By: Darcy Starcher
Darcy Starcher, Deputy Clerk

EXHIBIT "D"

CAUSE NO. 8583-99-6 & 8584-99-6
COURT of APPEALS NO. 12-99-369-CR & 12-99-00370-CR

FILED
2007 MAR 16 PM 2:36
DONNA PHILLIPS
DISTRICT CLERK

GEORGE GLEN ABNEY

EX-PARTE

§
§ IN THE DISTRICT COURT
§
§ NACOGDOCHES COUNTY, TEXAS
§
§ 145th JUDICIAL DISTRICT
§
§
§

MOTION FOR TRIAL COURT RECORDS ~~AT~~ AT
COUNTY EXPENSE

TO THE HONORABLE JUDGE OF SAID COURT;

COMES NOW, George Glen Abney, acting Pro-Se, and moves this Honorable Court to provide ALL COURT RECORDS in reference to the above styled and numbered cause, or provide him with access to review said records. In support of this MOTION, he would respectfully show this Honorable Court the following:

I.

Petitioner is an "INDIGENT PERSON", and has previously been declared by this Honorable Court in reference to said cause number to be indigent.

Petitioner further claims that he has a right to a complete copy of all trial transcripts either at County expense or on loan, so that he may review said records in preparation of his post conviction remedies, i.e. an 11.07 writ of Habeas Corpus.

The Petitioner respectfully request copies or access to the following documents and records:

- (1). All police reports, i.e. arrest, mirandation, investigation and witness ~~z~~ reports / statements;
- (2). All indictments;
- (3). Defense motion/objections;
- (4). All waivers or plea agreements signed by defendant;
- (5). criminal offense reports / P.S.L. reports;
- (6). lab reports / medical reports;
- (7). judgement / sentence records

EXHIBIT "E"

(8). All correspondence between defendant and Court Officials in reference to said cause number.

PRAYER

WHEREFORE, premises considered the Petitioner prays that this Honorable Court will grant in all things the Petitioner with either a free copy or access to all Trial Records in reference to said cause number.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "George Glen Anney". The signature is written in dark ink and is positioned above the typed name and address.

GEORGE GLEN ANNEY # 891960

2101 FM 369 N. Allred UNIT

IowaPark, TX 76367-6563

CAUSE NO. 8583-99-6 & 8584-99-6
COURT of APPEALS NO. 12-99-00359-CR & 12-99-00370-Cr

GEORGE GLEN ABNEY

EX-PARTE

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IN THE DISTRICT COURT

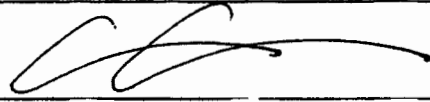
NACOGDOCHES COUNTY, TEXAS

145th JUDICIAL DISTRICT

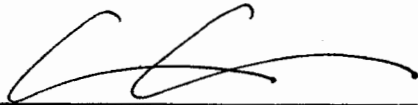
ORDER GRANTING COURT RECORDS

On this 15th day of March, 2007, comes for consideration the foregoing "MOTION FOR TRIAL COURT RECORDS" and will appear that said MOTION should be ~~GRANTED~~ / DENIED to which adverse ruling the Petitioner duly excepts.

JUDGE PRESIDING



EXECUTED and SIGNED on this the 20 day of March 2007



JUDGE PRESIDING



CHIEF JUSTICE
JAMES T. WORTHEN

JUSTICES
SAM GRIFFITH
BRIAN HOYLE

CLERK
CATHY S. LUSK

CHIEF STAFF ATTORNEY

TWELFTH COURT OF APPEALS

Thursday, March 29, 2007

George Glen Abney
#891960
2101 FM 369 N.
Allred Unit
Iowa Park, TX 76367

RE: Case Numbers: 12-99-00369-CR & 12-99-00370-CR
Trial Court Case Numbers: 8583-99-6 & 8584-99-6

Style: George Glen Abney
v.
The State of Texas

This is to acknowledge receipt of your Motion for Court Records at County's Expense in the above-referenced cases.

NOTICE: You are advised that the mandate in this case was issued on March 22, 2001. Therefore, this Court no longer has jurisdiction over these appeals. I am returning your motion to you.

Very truly yours,

CATHY S. LUSK, CLERK

By: Darcy Starcher
Darcy Starcher, Deputy Clerk

EXHIBIT "F"

CAUSE NO. 8583-99-6 & 8584-99-6

COURT OF APPEALS NO. 12-99-00369-CR & 12-99-00370-CR

Ex Parte

§ COURT OF APPEALS

§ TWELFTH DISTRICT OF TEXAS

GEORGE GLEN ABNEY

§ SMITH COUNTY TYLER, TEXAS

§

ORDER GRANTING APPELANTS MOTION
OF APPEAL DENIAL OF COURT RECORDS
AT COUNTYS EXPENSE

On this the 26th day of March, 2007, comes for consideration the foregoing
" Appeal of Courts denial of Petitioners Motion for Court Records at Countys Expense"
and will appear that said motion should be GRANTED / DENIED in all things to which
adverse ruling the Petitioner duly excepts.

JUDGE PRESIDING

EXECUTED and SIGNED on the this _____ day of _____ 2007

JUDGE PRESIDING

October 25, 2010

Office of the Clerk
Twelfth Court of Appeals
1517 West Front Street, Suite 354
Tyler, Texas 75702

Re: State of Texas v. George Glen Abney, appeal nos. 12-99-
00369-CR & 12-99-00370-CR, cause nos. 8583-99-6/8584-99-6

Dear Sir or Madam,

I wish to purchase a copy of all records referenced to my case, including statement of facts, clerk record, and supplemental records or transcripts, the briefs, motions, letters from or to the court, orders and opinions, petitions for discretionary review, etc. Though this is not a civil case, the Supreme Court of Texas has a standing order which has been added as an appendix to the Texas Rules of Appellate Procedure, stating that such records are priced at 10¢ a page. I believe this applies in the present case since the case is no longer actively criminal and only accessible through civil processes.

Please inform me of the cost for purchasing a copy. I have not been able to obtain a copy from the district clerk and need these records to prepare and file a petition for writ of habeas corpus.

Thank you in advance for your response.

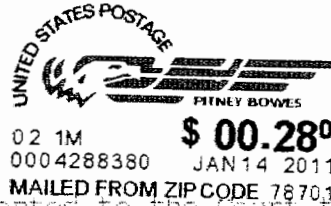
Sincerely,

George Glen Abney 891960
Allred Unit
2101 P.M. 369 N.
Iowa Park, Texas 76367-6568

EXHIBIT "G"

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

RE: Writ No. WR-75,290-01
STYLE: Abney, George Glen
TRIAL CT NO:
1/12/2011



I have this day received and presented to the Court the original application for writ of mandamus.

Louise Pearson, Clerk

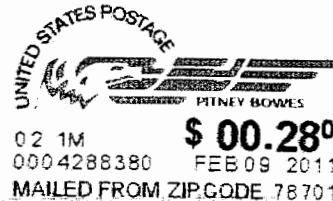
George Glen Abney
Allred Unit - TDC #891980
2101 FM 369 North
Iowa Park, TX 76367

3B51



OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

RE: Writ No. WR-75,290-01
STYLE: Abney, George Glen
TRIAL CT NO:
2/9/2011



This is to advise that the Court has denied without written order motion for leave to file the original application for writ of mandamus.

Louise Pearson, Clerk

3B52

George Glen Abney
Allred Unit - TDC #891980
2101 FM 369 North
Iowa Park, TX 76367

