



October 23, 2012

The Honorable Elia C. Lopez
Judge, 404th District Court, Cameron County, Texas
974 E. Harrison St.-Judicial Building
Third Floor
Brownsville, Texas 78520

Re: *Ex parte Manuel Velez*, No. 07-CR-721-WR

Judge Lopez:

At the hearing in *State v. Velez*, Cause Number 07-CR-721-G, held on October 11, 2012, I stated that habeas counsel expected it would take approximately three months to present evidence on Mr. Velez's habeas Application. After further reflection, I believe it will take significantly less time. Indeed, because no jury will be needed, much of the evidence will be presented by affidavit, and we expect the State will stipulate to many facts that are not truly disputed, the habeas hearing could be completed in two weeks or less.

At the habeas evidentiary hearing (scheduled to begin December 11, 2012), habeas counsel will focus on several issues justifying relief, including but not limited to the following:

- Habeas counsel will present medical testimony and evidence, which exculpates Mr. Velez, by showing that the victim's injuries did not occur during the timeframe or according to the theory relied on and presented by the State at trial. Instead, habeas counsel will present evidence that the victim's older head injuries, which the State attributed to Mr. Velez, occurred during a time when Mr. Velez was out of Texas, and before he and the victim's mother moved with their children to a house away from friends and family.
- Habeas counsel will present evidence and testimony showing that trial counsel grossly failed to investigate the facts relevant to the claims against Mr. Velez. In particular, the evidence shows that trial counsel did not investigate the medical evidence that would have destroyed the circumstantial theory on which the State relied at trial, and did not make reasonable use of the evidence readily available at the time.
- Habeas counsel also expects to present evidence and testimony showing that trial counsel failed to investigate and present evidence of the culpability of Acela Moreno, the victim's mother, and her known history of abusing her children, including the infant victim, despite telling the jury he would show she had inflicted the fatal injuries.

- Habeas counsel will present evidence of many other instances where Mr. Velez was deprived of effective assistance of counsel, such as when trial counsel failed to request an accomplice-witness instruction, among other egregious errors. These deficiencies were not a result of sound trial strategy.
- Habeas counsel will show that these errors (as well as prosecutorial errors, judicial errors, and the admitted corruption of the trial judge, Abel Limas), prejudiced Mr. Velez and undermine any confidence that might otherwise be afforded to the jury's verdict.

Habeas counsel expects that the presentation of the medical facts and other evidence exposing the gross errors committed by trial counsel will take approximately 5-6 working days, depending upon any stipulation of agreed facts, but cannot at this time predict how long the State will need to present its case. Following the hearing, the Court will need to make findings of fact and conclusions of law supporting its recommendations on whether Mr. Velez should be released or granted a new trial. Those findings and conclusions, together with the Application, Response, and Reply, the evidentiary hearing transcript, and any other filings or transcripts associated with this habeas action, will then be forwarded to the Court of Criminal Appeals as part of the habeas record. Enclosed with this letter is a graphic depiction of how this habeas record should proceed through this Court and to the Court of Criminal Appeals, and a description of the key differences between the direct appeal and the habeas action.

Finally, we have received a copy of the Motion for Continuance and Constitutionally Adequate Time to Prepare Defense for Life filed by Mr. Garza, and join in the request that any trial on punishment in this matter be postponed until after the habeas action has had time to run its course. Moreover, habeas counsel remains hopeful that upon further review of the trial and habeas records the State will drop its pursuit of the death penalty, which would eliminate the time and expense of trial on that issue.

Sincerely,



Neil Burger
Habeas Counsel for Manuel Velez
Ex parte Manuel Velez
Cause Number 07-CR-721-WR

Enclosure

cc: Armando Villalobos
Rene B. Gonzalez
Lawrence J. Rabb

Texas's Two Paths to Relief
From Conviction for Capital Murder and a Death Sentence
(Article 11.071 of the Texas Code of Criminal Procedure)

