

CAUSE NO.

EX PARTE

CLIENT

IN THE ___TH
JUDICIAL DISTRICT COURT
COLLIN COUNTY, TEXAS

APPLICATION FOR WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM PROSECUTION UNDER CCP 32.01

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant files this writ of habeas and requests this Court dismiss the prosecution of Defendant and discharge his bail as provided by Texas Code of Criminal Procedure Article 32.01(a) which “prevents citizens from being left in jail or on bail for long periods of time without being indicted.”¹

By operation, CCP 32.01 dictates that the State must indict within the period set by it², show good cause for the delay, or suffer the dismissal of the charges.”³ Despite a delay of 333 days, the State did not indict Defendant during the term of court in which he was arrested or in the following term, and it cannot show good cause for the delay.

Habeas relief, therefore, is warranted so that Defendant “repossesses certain liberty interests,” that is to say “he is out of jail and off bail” unless and until the grand jury presents an indictment.”⁴

¹ *Ex parte Martin*, 6 S.W.3d 524, 529 (Tex. Crim. App. 1999).

² Texas Code of Criminal Procedure 32.01 provides that a defendant in custody or held to bail must be indicted or information filed on or before the last day of the next term of the court which is held after the defendant’s commitment or admission to bail or on or before the 180th day after the date of commitment or admission to bail, whichever date is later.

³ *Ex parte Martin*, 6 S.W.3d 524, 529 (Tex. Crim. App. 1999).

⁴ *Ex parte Martin*, 6 S.W.3d 524, 529 (Tex. Crim. App. 1999) (emphasis added).

1. To date, no indictment or information has been presented against the Defendant. The current prosecution began on MM DD, YYYY when Defendant was arrested. Defendant was held in custody, posted bail, and remains subject to liberty-restraining bond conditions.⁵

2. XX days have passed from the date of Defendant's commitment and admission to bail to the date of the filing of this writ, which is a time period greater than 180 days. Further, the last day of the next term of court has also passed. Defendant was arrested during the term of court which began MM DD, YYY and ended MM DD, YYYY. The next term of court began MM DD, YYY and ended MM DD, YYYY.⁶

3. Neither the Defendant nor Defendant's counsel have committed any act or omission contributing to this delay.

4. No good cause can be shown for this delay, including circumstances such as "backlog, staff shortage, or general negligence."⁷ In *Barker v. Wingo*, the Supreme Court stated that "unreasonable delay in run-of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the State's criminal justice system are limited and that each case must await its turn."⁸

5. In 1999, the Court of Criminal Appeals adopted a *Barker*-like totality-of-circumstances test for the determination of good cause under article 32.01⁹ In 2007, the Court reaffirmed its fact-based balancing test listing factors to be considered: "length of

⁵ See Ex. 1, Defendant's Conditions of Bond and subsequent modification of the draconian pre-trial conditions of bond on MM DD, YYYY following a hearing on Defendant's writ of habeas corpus.

⁶ See Texas Government Code Section 24.012 "[E]ach district court holds [] terms that commence on the first Mondays in January and July of each year."

⁷ *Ex parte Martin*, 33 S.W.3d 843, 846 (Tex. App. 2000)

⁸ See *Barker v. Wingo*, 407 U.S. 514, 516 (1972).

⁹ *Ex parte Martin*, 6 S.W.3d 524, 528–29 (Tex. Crim. App. 1999).

the delay, the reason for the delay, lack of diligence, prior grand jury action, and harm to the accused” to determine whether the state has good cause for delay.¹⁰

6. In this case, the delay is manifestly long. Throughout a XX-day wait, Defendant has suffered financial, social, familial, and personal-liberties harm.

7. He has incurred great costs related to his disability. Defendant is confined to a wheelchair and requires full-time care. He cannot lift his arms and has limited walking ability. Prior to his arrest, his mother and father provided this care for him at no cost in the family home, however, he was forced to move out due to bond conditions imposed. Given his limited resources, finding an assisted living home in the counties in which he is permitted to be was exceptionally challenging.

8. Defendant remains subject to onerous bond conditions which prohibit him from social media altogether, which the U.S. Supreme Court has stated prevents him from “engaging in the legitimate exercise of First Amendment rights.”¹¹ Because of Defendant’s lifelong disability, his entire social network and support system has been online. Through online gaming, Defendant made friends that did not see him for his disability but for his ability to perform on a level playing field.

9. Finally, Defendant has been separated from his extended family due to bond conditions limiting those with whom he can interact.

¹⁰ See *Ex parte Countryman*, 226 S.W.3d 435, 438 (Tex. Crim. App. 2007).

¹¹ See *Packingham v. North Carolina*, 137 S.Ct.1730, 1737 (2017).

REQUESTED RELIEF

Defendant requests the Court grant habeas relief or in the alternative, that this Court schedule this matter for a hearing as soon as possible and that at such hearing this writ will be granted and the prosecution dismissed and bail discharged.

Respectfully submitted,

SHELLIE STEPHENS PC
6200 Chase Oaks Boulevard, Suite 102-C
Plano, Texas 750723
Tel. (214) 945-3266

/s/ Shellie Stephens

Counsel for Defendant
SBN: 24079398
ss@shelliestephens.com

CERTIFICATE OF SERVICE

This certifies that on the date of e-filing the above document was served on the attorney for the State (eserveDA@collincountytx.gov) via EFILE.TEXAS.GOV.

/s/ Shellie Stephens