

TEXAS COURT OF CRIMINAL APPEALS

Chan Lau v. State

Lau · No. Cause No. 1228363-A · Decided January 5, 2015

SUMMARY

This document is a motion for rehearing filed on behalf of Chan Lau in a Texas post-conviction habeas corpus proceeding. The motion alleges that the convicting court failed to transmit a complete record to the Texas Court of Criminal Appeals, including money-order exhibits asserted to support an actual-innocence claim, and requests supplementation of the record, rehearing, habeas relief, reversal of the conviction, and release.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	January 5, 2015
DOCKET	Cause No. 1228363-A
DISPOSITION	other
PROCEDURAL POSTURE	Applicant moved for rehearing after the Texas Court of Criminal Appeals denied his post-conviction application for writ of habeas corpus without written opinion.
PRECEDENTIAL VALUE	Nonprecedential motion filing; no adjudicative opinion or binding holding is included in the source.
PARTIES	Chan Lau v. State of Texas

TOPICS

- state post-conviction relief
- actual innocence
- appellate procedure
- due process
- equal protection

PRACTICE AREAS

- post-conviction habeas corpus
- criminal procedure
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether the alleged omission of exhibits from the record transmitted by the convicting court warranted supplementation of the habeas record and rehearing.

2. Whether failure to transmit the complete habeas record violated Lau's due-process and equal-protection rights.

KEY QUOTATIONS

“That is, the statute requires the clerk to forward all pertinent material in the habeas record, including transcriptions of all hearings, all exhibits, and all memoranda of law.”

FACTUAL BACKGROUND

Lau claimed that the convicting court clerk failed to transmit two money-order exhibits with the habeas record. According to the motion, one omitted exhibit was an original money order that allegedly supported Lau's actual-innocence claim. Lau asserted that the Texas Court of Criminal Appeals denied his habeas application without access to the complete record.

PROCEDURAL HISTORY

The 351st Judicial District Court allegedly transmitted an incomplete habeas record to the Texas Court of Criminal Appeals. The Court of Criminal Appeals denied Lau's application for writ of habeas corpus on November 26, 2014, without written opinion. Lau then filed this motion for rehearing, asserting that omitted money-order exhibits supported his actual-innocence claim and requesting supplementation of the record, rehearing, reversal of his conviction, and release.

DISPOSITION

other

CASES CITED

- Ex Parte Jackson, 366 S.W.3d 201 (Tex. Crim. App. 2012)

OPINION

Lau, Chan Wing

PER CURIAM.

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MR. ASHLEY BURLESON

ATTORNEY AND COUNSELOR AT LAW

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Abel Acosta Clerk Texas Court of Criminal Appeals P.O. Box 12308 December 24, 2013 Austin, Texas 78711 PvE: Postconviction Application for Writ of Habeas Corpus Cause No. 1228363-A Dear Clerk, Please find enclosed for filing in the above-referenced Cause Applicant's Motion for Rehearing and attachments thereto for filing among the papers in the above-referenced Cause. Your prompt attention given to this matter will be appreciated. Respectfully Submitted, Mr. Ashley

Burleson, Attorney At Law ^N O5 m Ashley B. Bauson K Texas State Bar No. 24058633 Atoe\ Acosta, C>e x00xTexas Avenue5 Suite x400 Houston, Texas 77002 Telephone: (713)201-7399 Facsimile: (888) 260-5496 Email: ashleycando@gmai Cause No. 1228363-A Chan Lau § Applicant Vs. § In the Court of Criminal Appeals of the State of Texas The State of Texas § State § MOTION FOR REHEARING

To the Honorable Court of Criminal Appeals: Now comes the Applicant, Chan Lau, and moves the court to set aside the judgment of the Court denying Applicant's post-conviction Writ of Habeas Corpus rendered and entered herein on or about the 26th day of November, 2014, and grant a rehearing of this cause, for the following reasons, to wit: In violation of Article 11.07 (3)(c) of the Texas Code of Criminal Procedure, the 351st Judicial District Court failed to transmit all of the existing record in this Cause to the Court of Criminal Appeals. The omission included evidence supporting Applicant's claims. Attorney for Applicant verified with the Court of Criminal Appeals on December 19, 2014, that this portion of the record was absent from those records transmitted to this Court by the 351st Judicial District Court. Applicant states that the name of the opposing counsel in this cause is Andrew J. Smith , and he resides in , Harris County, Texas. Argument and authorities in support of this Motion for Rehearing are attached hereto and made a part hereof. Respectfully Submitted, Mr. Ashley Burleson, Attorney At Law By:. Ashley B. Etufleson Texas State Bar No. 24058633 1001 Texas Avenue, Suite 1400 Houston, Texas 77002 Telephone: (713)201-7399 Facsimile: (888) 260-5496 Email: ashleycando@gmail.com

CERTIFICATE

I, Ashley Burleson., attorney of record for Applicant, .Chan Lau., hereby certify that a true and correct copy of this Motion for Rehearing, together with written arguments and authorities attached thereto, have been delivered to the following parties, by posting, certified mail, to their address, this the "2^ f 7^day of December , 2014. and addressed as follows: Chris Daniels Harris County District Clerk 201 Caroline, Suite 420 Houston, Texas 77002 Andrew J. Smith Assistant District Attorney Harris County, Texas 1201 Franklin, 6th Floor Houston, Texas 77002. ^l_ Ashley B. B Cause No. 1228363-A Chan Lau, § Applicant, Vs. § In the Court of criminal Appeals of the State of Texas The State of Texas, § State.

ARGUMENT AND AUTHORITIES

ON MOTION FOR REHEARING

Argument The Court denied Applicant's Application for Writ of Habeas Corpus without written opinion on November 26, 2014. This Court denied Applicant's Application for Writ of Habeas Corpus without benefit of a complete record transmitted to this Court by the Clerk of the 351st Judicial District Court. Specifically, the clerk failed to include among the records in this Cause i Applicant's (Exhbiit B Original Money Order which accompanied Applicant's Memorandum of Fact and Law in Support of Application for Writ of Habeas Corpus and (Exhibit Blank Money Order) which accompanied Applicant's Objections to State's Proposed Findings of Fact and Law, Conclusions of Law and Order. In his application for Writ of Habeas Corpus, Applicant raised as

one of his claims a claim of actual innocence grounded on the fact that there does exist an original of the money order in question. The exhibit excluded by the clerk demonstrates the existence of the original of the money order in question and therefore supports Applicant's actual innocence. See: Memorandum of Fact and Law in Support of Application for Writ of Habeas Corpus. On or about December 19, 2014, in response to an inquiry from Applicant's counsel of record, Ms. Victoria Jones of the Texas Court of Criminal Appeals sent, via email, copies of all materials transmitted by the District Clerk to the Court of Criminal Appeals. Article 11.07, § 3(d) of the Texas Code of Criminal Procedure requires that the clerk of the convicting court, in this case the 351st Judicial District Court, "transmit to the Court of Criminal Appeals, under one cover, the application, any answers filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact." "That is, the statute requires the clerk to forward all pertinent material in the habeas record, including transcriptions of all hearings, all exhibits, and all memoranda of law." Article 11.07, § 3(d), T.C.C.P., Ex Parte Jackson, 366 S.W.3d 201 (Tex.Crim.App.2012). Where the clerk of the convicting court fails to transmit a complete record to the Court of Criminal Appeals, Applicant is denied due process and equal protection of the law guaranteed to him by the United States Constitution and the Texas Constitution. Conclusion and Prayer WHEREFORE, premises considered, Applicant prays that this Court withdraw its mandate, allow Applicant to supplement the record with (EXHIBIT B ORIGINAL MONEY ORDER), grant this Motion for Rehearing, and in the interest of justice, grant the Application for Writ of Habeas Corpus (No. 1228363-A), reverse the conviction in Cause No. 1228363, and order Applicant's immediate release from Respondent's custody. Respectfully Submitted, Mr. Ashley Burleson, Attorney At Law Ashley B. Buneson Texas State Bar No. 24058633 1001 Texas Avenue, Suite 1400 Houston, Texas 77002 Telephone: (713)201-7399 Facsimile: (888) 260-5496 Email: ashleycando@gmail.com *•• utr A <orv or munua

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