



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

Ex Parte: Bilal Muhammad,	§	No. 08-22-00234-CR
	§	Appeal from the
Appellant.	§	168th Judicial District Court
	§	of El Paso County, Texas
	§	(TC# 2019DCV2636)

CONCURRENCE

The majority is of course correct that based on the record here, and the law that governs our conduct, there is no relief that can be granted in this proceeding. I write separately only to emphasize the stain that this case has become on the justice system. In one of the prior appeals before us in March of this year, we wrote:

From our record, Muhammad has been incarcerated in the County jail from December 2015 up until today, save only the brief several months he was allowed to stay at the Rescue Mission. Nearly six years of *pre-trial* detention speaks for itself. The pandemic has brought with it many challenges, including the inability of trial courts to promptly try the volume of criminal cases they once did. The delay in trying cases, however, only begets more strain on the court system, as the litany of mandamus and habeas filings in this case demonstrate. We deny the relief here, but urge the lower court, defense counsel, and the State's district attorney to set this matter for trial. We do not ascribe any fault for any period of delay; our limited record does not allow for, nor require that inquiry. But pandemic or no pandemic, it is time to get this case to trial.

Ex parte Muhammad, 08-21-00199-CR, 2022 WL 601937, at *3 (Tex. App.--El Paso Mar. 1, 2022, pet. ref'd). Remarkably, another eight months have passed without this case being disposed of.

As a young lawyer, I had the privilege of practicing before the Honorable Lucias Bunton, who presided over the United States District Court for the Western District of Texas. Faced with

an October trial setting in a multi-party case with witnesses from around the country, the several trial lawyers jointly moved to continue the case for some seemingly valid, but now long forgotten reason. Judge Bunton granted the motion but reset the case on December 23rd with language in his order to the effect that not even death of counsel would suffice to support any further continuance. And indeed, the case was tried on December 23rd with the jury returning a verdict late on Christmas Eve. Judge Bunton, though irascible at times, understood that litigants' convenience must sometime give way to the system's need to promptly dispense justice.

From our perch on the 12th floor of the El Paso County Courthouse, I cannot say why this case has not been tried; our cold written record contains only the several motions and orders substituting counsel, and motions for continuance that have resulted in an almost seven-year delay in resolving the case. I also acknowledge the effect of COVID-19, but am also not blind to the jury panels now regularly being qualified in our courthouse. Even with the many questions for why this case has taken so long to resolve, I can make two observations with confidence. First, Mr. Muhammad has now spent more time in pretrial incarceration than what the jury could assess as the low end of the punishment range if he is convicted. *See* TEX. PENAL CODE ANN. § 12.32(a) (punishment range for first degree felony is not more than 99 years or less than 5 years). Second, when the epitaph of this case is written, no one will say, "This was their finest hour."

JEFF ALLEY, Justice

December 9, 2022

Before Rodriguez, C.J., Alley, J., and Marion, C.J. (Ret.)
Marion, C.J. (Ret.) (Sitting by Assignment)

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