AFFIRMED and Opinion Filed December 8, 2021

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-00049-CR

EX PARTE ANTHONY TYRONE JOHNSON

On Appeal from the 439th Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 1-20-1620

MEMORANDUM OPINION

Before Chief Justice Burns and Justices Myers, and Garcia
Opinion by Chief Justice Burns

Anthony Tyrone Johnson appeals the trial court's order denying relief on his pretrial application for writ of habeas corpus seeking a reduction in his bond. In a single issue, appellant contends the trial court abused its discretion in refusing to reduce his bond. Finding no abuse of discretion, we affirm the trial court's order.

Background

Appellant was charged with aggravated kidnapping. *See* TEX. PENAL CODE ANN. § 20.04(a)(4). A justice of the peace set appellant's bond at $250,000 and required appellant to wear an electronic monitoring device to be placed prior to his release from jail. On the following day, before appellant was released, the State filed a motion to increase appellant's bond to $2,000,000, citing appellant's criminal

history, gang affiliation, a previous aggravated assault conviction, and a recorded telephone call on the evening of September 17, 2020. In the telephone call, the State reported an unidentified woman informed appellant that he would be released the following morning to which appellant responded, "I'm going to get out of here and run. . . . They gonna' let me go. I'm gonna' get out of here. . . . Cut this . . . thing off and . . . . That's what happens if they let me go." The justice of the peace granted the State's motion and increased appellant's bond to $2,000,000.

An examining trial was held before the justice of the peace. During the examining trial, a police detective testified about her interview with the complainant at a hospital where the complainant was being treated for injuries she suffered during the offense.

The complainant told the detective that she attended a party to meet a woman in the hair care business. The woman introduced her to "Buck," whom the woman described as her boyfriend and "financial backer." Buck persuaded the complainant to leave with him and another woman and go to a second party at a two-story house overlooking a golf course in Rockwall County.

At the Rockwall house, the complainant found a number of young women, mostly undressed, and an older woman who seemed to be in charge. At one point, the complainant put her phone down and someone took it. When no one would admit to taking her phone, she asked for someone to drive her home. Buck told her she could not leave and threatened her, saying she did not know who he was, that he had

been to prison, and that he could hurt her family. The complainant, who had been drinking and using marijuana, was sent upstairs to lie down in a bedroom with the older woman watching her. When the older woman fell sleep, the complainant attempted to escape, but found the doors locked with keyed deadbolts. The complainant's efforts to open a door triggered an alarm and Buck caught her. Buck grabbed her, choked her, and dragged her back upstairs to the bedroom. Buck then beat the older woman with an extension cord for failing to watch the complainant. Buck then took the complainant's clothes, leaving her with her bra and panties, and giving her a brown t-shirt.

After her monitor again fell asleep, the complainant was able to escape by cutting a hole in a screen that surrounded a balcony and leaping to the ground below. Although she sprained her ankle during the fall, the complainant was able to go to a nearby house where the police were summoned. The detective testified that during her ensuing investigation, she determined "Buck" was appellant.

At the end of the examining trial, appellant again raised the issue of his bond. The ensuing discussion makes plain that the recorded telephone call was the basis for the increase in his bond. After appellant's counsel raised an issue of whether appellant actually made the threat to abscond, the justice of the peace asked to listen to the original tape. After listening to the tape the justice of the peace stated:

> I've listened to the tape. You've listened to the tape. The State presented the tape. We elicited bond, a two-million-dollar bond.

> According to the—the State's complaint or the motion to increase the bond, I'm convinced that everything that he said, [appellant] said, was what was on the tape. I'm not—it's not in debate to me. It sounds just exactly like that. I've listened to it three or four different times and heard the same thing.

The justice of the peace denied appellant's request to lower the bond.

Appellant filed an application for writ of habeas corpus seeking a reduction in his bond. On January 19, 2021, the trial court conducted a hearing on the habeas application. Appellant had marked the exhibits to his application with letters. The trial court expressed its preference that the exhibits be marked with numbers. The trial court stated, "I just usually do whole numbers, so you are going— I know this is going up, so we need to work something out on that." The transcript of the examining trial was admitted as an exhibit.

In opening remarks, appellant's counsel described the recorded telephone call as "the big issue" that caused the escalation of appellant's bond. Counsel also disclosed to the trial court that appellant had been indicted on a federal kidnapping charge and the federal district court was going to conduct a bond hearing for the federal charge. The defense presented three witnesses—appellant's mother, sister, and an attorney who had written bonds for him in prior cases.

Appellant's mother testified appellant is forty-three years old, he has lived in Dallas for most of his life, he attended high school in Dallas, and he has six young children. Appellant's mother agreed appellant has been in trouble with the law most of his adult life, had been arrested multiple times before in Texas, Florida, California,

and New Jersey, but she testified appellant always kept his court dates and had never violated any of his previous bonds. Appellant had served fifteen months in prison for unlawful possession of a firearm by a felon and five years in prison for aggravated assault. Appellant's mother testified that when appellant was convicted of aggravated assault, the trial court had given him several months to get his affairs in order before beginning his five-year sentence. Appellant then reported to prison on time to serve his sentence. After returning from prison in 2019, appellant was seeking work and "trying to get his life together," a process that was interrupted by the pandemic. Appellant was trying to start a company to make t-shirts. Appellant's mother testified her family members could raise the $250,000 bond.

Appellant's sister testified appellant has deep roots in Dallas where all of his extended family lives. Appellant's sister testified appellant is very involved in his children's lives and participates in various charitable activities. The sister testified appellant had been on bond before, including electronic monitoring, and had never absconded. She described appellant as "a man of his word" who would accept responsibility and take the consequences for his actions. The sister also testified the family could raise money to post a $250,000 bond, but not a $2,000,000 bond.

The attorney witness testified that he had represented appellant "off and on" for over fifteen years and had written "over a dozen" bonds for him before without incident. The attorney had been talking to appellant early in the case and would have had no concerns posting the $250,000 bond if appellant had retained him. The

attorney, however, lacked the ability to post such a large bond and had been talking to other bondsmen about going in on the bond, but no agreement had been reached.

After the witnesses testified, appellant's counsel stipulated that the State's rendition of appellant's statement on the recorded jail telephone call was accurate. The trial court listened to the portion of the recording of the jail telephone call where appellant stated he planned to cut off his ankle monitor and run. After taking the matter under advisement, the trial court denied the application.

Standard of Review and Relevant Law

An applicant for habeas corpus relief must prove the applicant's claims by a preponderance of the evidence. *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006). In reviewing the trial court's order, we view the facts in the light most favorable to the trial court's ruling, and we uphold the ruling absent an abuse of discretion. *Id*. The trial court, as fact finder at the writ hearing, is the exclusive judge of witness credibility. *Ex parte Amezquita*, 223 S.W.3d 363, 367 (Tex. Crim. App. 2006). We afford almost total deference to a trial court's factual findings when those findings are based upon credibility and demeanor. *Id*. If, however, the trial court's determinations are questions of law, or else are mixed questions of law and fact that do not turn on an evaluation of witnesses' credibility and demeanor, then we owe no deference to the trial court's determinations and review them *de novo*. *State v. Ambrose*, 487 S.W.3d 587, 596–97 (Tex. Crim. App. 2016).

In a habeas challenge to the amount of bail, it is the accused's burden of proof to show that the bail set by the trial court is excessive. *Ex parte Rubac*, 611 S.W.2d 848, 849 (Tex. Crim. App. [Panel Op.] 1981). We review the trial court's determination for an abuse of discretion. *See* i*d*. at 850; *Ex parte Miller*, 442 S.W.3d 478, 481 (Tex. App.—Dallas 2013, no pet.). A trial court abuses its discretion if it acts without reference to any guiding rules or principles or if its actions are arbitrary or unreasonable. *Miller*, 442 S.W.3d at 481. It does not constitute an abuse of discretion for the trial court merely to decide a matter within its discretion in a different manner than the appellate court would under similar circumstances. *Id*.

The primary purpose of a bond is to secure the accused's presence at trial. *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977). The code of criminal procedure provides:

> The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:
>
> 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
>
> 2. The power to require bail is not to be so used as to make it an instrument of oppression.
>
> 3. The nature of the offense and the circumstances under which it was committed are to be considered.
>
> 4. The ability to make bail is to be regarded, and proof may be taken upon this point.

> 5. The future safety of a victim of the alleged offense and the community shall be considered.

TEX. CODE CRIM. PROC. ANN. art. 17.15.

In determining a reasonable bail, courts may also consider an accused's work record, family and community ties, length of residency, prior criminal record, conformity with previous bond conditions as well as the existence of any other bonds, any aggravating circumstances of the charged offense, and the punishment range for the charged offense. *See Rubac*, 611 S.W.2d at 849–50; *Miller*, 442 S.W.3d at 482. The accused's ability to make bail, while a factor to consider, is not decisive, even in the case of indigency. *See Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex. Crim. App. [Panel Op.] 1980).

Analysis

In his sole issue, appellant contends the trial court abused its discretion in failing to reduce his bond. Appellant contends that a "detached magistrate" had set appellant's bond at $250,000, that the bond originally set was sufficient to assure his appearance for trial, and that there was no justification for the trial court to raise the bond to $2,000,000. Appellant contends that when he presented his habeas application requesting a reduction, the trial court had already prejudged the outcome of the habeas hearing as shown by its comment at the beginning of the hearing that it knew this case was "going up" on appeal. Appellant contends the evidence he

presented shows the $250,000 bond initially set provides a reasonable assurance of his appearance and should be reinstated.

I. Waiver

Before addressing the merits, we consider a waiver argument raised by the State. The State argues appellant waived any argument that the trial court prejudged his case. To raise an issue on appeal, appellant must preserve the issue in the trial court proceedings below. *See* TEX. R. APP. P. 33.1(a); *Ex parte Perez*, 536 S.W.3d 877, 880 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (appellate court's habeas review limited to issues raised and decided in trial court habeas proceedings); *see also Ex parte Dwyer*, No. 08-01-00059-CR, 2002 WL 28018, at *5 (Tex. App.—El Paso Jan. 10, 2002, pet. ref'd) (not designated for publication) (complaint about convicting court bias or prejudice waived by failure to raise it in habeas proceedings).

In his reply brief, however, appellant clarifies that he is not raising an issue of the trial court's bias as an independent complaint on appeal. Rather he is raising the matter as evidentiary support in the record showing the trial court abused its discretion in denying habeas relief. As clarified by appellant, we will consider the trial court's statement as part of appellant's issue regarding abuse of discretion.

II. Prejudgment

Appellant first contends the trial court's observation that the matter was going up on appeal could only have been directed at him because the State does not have

the right to appeal an adverse determination on a pretrial habeas. *See* TEX. CODE CRIM. PROC. ANN. art. 44.01 (setting forth the State's right to appeal and not including pretrial habeas matters in the list of approved appeals). Appellant concludes the trial court's remark shows it had already resolved the habeas matter against him. Appellant contends that if the trial court had considered the matter with an open mind, it would have resolved the bond issue in his favor because the evidence showed that although he had been arrested many times, he has only been convicted once, has always reported to court proceedings without problems, has deep family ties to North Texas, and his family could only raise $250,000 for his bail.

The State responds that the trial court's single remark, made in the context of preparing exhibits to create what the trial court viewed as a better appellate record, does not suffice to prove prejudgment. We agree with the State.

The record shows the trial court listened to appellant's witnesses and took the matter under advisement rather than issue an immediate ruling. Nothing other than the trial court's accurate prediction that the matter would be appealed shows any bias by the trial court. Moreover, although appellant requests that the Court restore his bond to the $250,000 initially set by "the detached magistrate," appellant ignores that the same "detached magistrate" who initially set the $250,000 bond—the justice of the peace—was the official who raised it to $2,000,000 and denied appellant's request to lower the bond after the examining trial. We conclude appellant has not

carried his burden to show the trial court's stray remark about the case "going up" indicates the trial court abused its discretion in refusing to lower appellant's bond. *See Kniatt*, 206 S.W.3d at 664.

III. Article 17.15 Factors

A. Reasonable Assurance

The first factor under article 17.15 is that "bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with." Appellant contends that other cases considering offenses of a similar level show a $250,000 bond is sufficient. Appellant points out that all of the facts except the recorded telephone call were before the magistrate who initially set bond at $250,000. Appellant contends he has been charged, although not convicted, of serious offenses in the past and has always appeared for his court proceedings. Appellant points to several appellate opinions, involving aggravated kidnapping and other serious offenses, as examples showing that a bond of $250,000 is sufficient to reasonably assure a defendant's appearance for trial.

We agree with appellant that in an ordinary case, a bond of $250,000 would be sufficient to assure a defendant's presence for trial under the circumstances of this case. *See, e.g., Ledet v. State*, No. 01-09-01040-CR, 2010 WL 1840251, at *4–5 (Tex. App.—Houston [1st Dist.] May 6, 2010, no pet.) (mem. op., not designated for publication) (upholding $250,000 bond for defendant charged with aggravated kidnapping where violent offense alleged, potential for significant punishment, lack

of community ties, and associated flight risk); *Ex parte Scott*, 122 S.W.3d 866, 869–71 (Tex. App.—Fort Worth 2003, no pet.) (no abuse of discretion in refusing to reduce $100,000 bond set in aggravated kidnapping case where evidence was insufficient regarding defendant's community ties and ability to make bail and trial court was concerned about complainant's safety). However, there is no objective amount of bail that is reasonable or unreasonable for a particular type of case; rather each case must be evaluated on a case-by-case basis taking into account the uniqueness of each defendant and each offense. *See Ex parte Cardenas*, 557 S.W.3d 722, 730 (Tex. App.—Corpus Christi-Edinburg 2018, no pet.).

In this case, the justice of the peace initially set appellant's bond at $250,000. The record further shows appellant, upon being informed that he would be released on $250,000 bond the following morning, stated he planned to cut off his leg monitor and "run" when he was released. The presence of a recorded conversation in which appellant expresses his intention to run, despite the $250,000 bond posted, is a unique, distinguishing factor not present in the cases appellant cites.

In only one of the cases appellant cites, *Ex parte Watson*, is there any evidence of an intention to flee the jurisdiction. In *Watson*, among many other reasons to set a high bail, the State pointed out that the accused had made plans to escape from jail. *See Ex parte Watson*, 940 S.W.2d 733, 735 (Tex. App.—Texarkana 1997, no pet.). The appellate court found the trial court did not abuse its discretion in refusing to reduce the $350,000 bail the trial court had set in that case for the defendant charged

with nineteen offenses including two capital murders and four aggravated kidnapping charges. *See id*. Even in *Watson*, there was no evidence showing the accused would forfeit bail to flee.

In his brief, appellant characterizes his recorded statement as a "brief rant," made "imprudently," "in a moment of frustration and bluster" and at odds with his long history of compliance with bond conditions and requirements to appear in court. However, it is the trial court's prerogative to assess the weight and credibility of the evidence. *See Amezquita*, 223 S.W.3d at 367.

The record shows the trial court and the parties focused heavily on the recording in discussing the propriety of appellant's enhanced bail. It was played for the trial court during the habeas hearing just as it had been played for the justice of the peace during the examining trial. The recording, provided to this Court as an exhibit in the reporter's record of the habeas hearing, indicates appellant made the comment substantially as the State alleged.

We must view the evidence in the light most favorable to the trial court. *See Kniatt*, 206 S.W.3d at 664. Viewed under the appropriate standard, the record shows the trial court would not abuse its discretion in concluding that a bond of $250,000 would not reasonably assure appellant's appearance for trial. *See* art. 17.15(1); *Vasquez*, 558 S.W.2d at 479 (primary purpose of bond is to secure accused's presence at trial). Appellant expressly stated that he intended to abscond if he was released on $250,000 bail. *See Ex parte Simpson*, 77 S.W.3d 894, 897 (Tex. App.—

Tyler 2002, no pet.) (per curiam) (upholding $600,000 bail, reduced from $1,000,000, for defendant accused of murder where defendant wrote letters from jail indicating a likelihood that he would return to gang activities or flee jurisdiction if released).

In his reply brief, appellant compares this case to a recent bond case out of this Court. *See Ex parte Comminey*, No. 05-19-00325-CR, 2019 WL 2912239 (Tex. App.—Dallas July 8, 2019, no pet.) (mem. op., not designated for publication). In *Comminey*, this Court affirmed an order denying habeas relief to reduce a $250,000 bond set for a defendant accused of murder. *See Comminey*, 2019 WL 2912239, at *1. At the time of the murder, the defendant in *Comminey* was living in Las Vegas and traveled to Dallas to commit the murder. *Id*. at *2. After the murder, the defendant used cash to purchase a quick flight back to Las Vegas where he was arrested three months after the offense. *Id*. Citing a number of factors, including evidence suggesting the defendant had tried to flee back to Las Vegas after the offense, the Court concluded the defendant had not shown he was not a flight risk as the State had alleged. *Id*. at *5.

Appellant contends that under the article 17.15 factors, he has a more compelling case for a bond reduction than the defendant in *Comminey*. However, as in the *Watson* case we discussed earlier in this opinion, the existence of a recorded conversation wherein appellant stated his intent to abscond despite the existence of a $250,000 bond, is a distinguishing factor. A defendant's intention to leave the

jurisdiction to return to his home when there are no pending charges and no bond at stake is distinguishable from a defendant who states his intention to leave after indictment and forfeit a $250,000 bond.

Appellant next contends that if he was released on bail, he would necessarily have another bail proceeding in federal court that might impose additional conditions on his release. The record shows appellant has been indicted on federal kidnapping charges. What action the federal court might take on appellant's bail, however, is purely speculative. *See* 18 U.S.C. § 3142 (providing for release or detention of individual charged with federal offense pending trial). Appellant cites no authority holding that a pending federal indictment would justify releasing him on bond despite strong evidence showing the bond is insufficient to reasonably assure his appearance at trial. Because appellant has not shown that $250,000 bail would reasonably assure appellant's appearance at trial, we cannot conclude the trial court abused its discretion by denying appellant's requested habeas relief and restoring the $250,000 bail. *See* art. 17.15(1).

B. Instrument of Oppression and Ability to Make Bail.

The second and fourth factors considered are that the power to require bail may not be used as an instrument of oppression, and the trial court must consider the accused's ability to make bail. *See id.*, at 17.15(2), (4). We discuss these factors together because whether bail is oppressive in any particular case depends on the accused's financial circumstances. Bail is considered oppressive if it is set at an

amount the defendant cannot afford for the express purpose of forcing him to remain incarcerated until trial. *Ex parte Nimnicht*, 467 S.W.3d 64, 70 (Tex. App.—San Antonio 2015, no pet.).

We note that there is a sizeable gap between the insufficient $250,000 bail originally set and the current $2,000,000 bail the trial court declined to reduce in the habeas proceeding. Appellant contends increasing his bail 800% is oppressive, especially in light of his family members' testimony that the family cannot raise the $2,000,000 bail.

However, appellant limited his evidence and arguments in the trial court to arguing in favor of the restoration of the original $250,000 bail. Appellant's mother and sister testified the family could afford a $250,000 bond. Appellant's sister testified the family could not afford a $2,000,000 bond. The credibility of these assessments is a matter for the trial court to decide. *See Amezquita*, 223 S.W.3d at 367.

Moreover, the defense testimony is conclusory and provides no insight into appellant's resources. *See Scott*, 122 S.W.3d at 870 (declining to find trial court abused its discretion in denying bond reduction where defendant failed to provide details regarding his or his family's assets and financial resources and efforts to furnish bond); *Ex parte Chavfull*, 945 S.W.2d 183, 186–87 (Tex. App.—San Antonio 1997, no pet.) (finding testimony by accused's mother that he was not working and had no money and that family could raise only $1,000 for bail

inconclusive to show bail used as instrument of oppression). Appellant's mother described appellant as looking for work and trying to start a t-shirt business. But the testimony from the examining trial paints appellant as the "financial backer" of a business venture and creates the inference that he has some possessory interest in the home in Rockwall County. Moreover, the recorded statement indicating appellant was willing to forfeit a $250,000 bond and flee could also be viewed as showing he possessed financial resources not revealed by the defense witnesses who focused almost exclusively on what "the family" could do.

On appeal, appellant again requests reinstatement of the $250,000 bond. In one place in his brief, appellant states, "Appellant would have been in a difficult position if the trial court had reduced bond to say $500,000. Appellant likely would not have been able to make that bond but it would have, arguably, been at the high end of the discretionary range." This is the only statement in the trial court or on appeal where appellant suggests an amount for bail other than to say the $2,000,000 bond is excessive and the $250,000 bond is appropriate.

Without evidence, or even argument other than the bare statement in appellant's brief quoted above, illuminating what amount above $250,000 would be sufficient to dissuade appellant from cutting off his leg monitor and absconding, we cannot conclude appellant has met his burden of proof to show the bail set was oppressive as to him or that the trial court abused its discretion by denying habeas

relief. *See Rubac*, 611 S.W.2d at 850; *Miller*, 442 S.W.3d at 481; *Scott*, 122 S.W.3d at 870; *Chavfull*, 945 S.W.2d at 186–87.

C. Nature and Circumstances of the Offense and Future Safety of the Victim and the Community

Appellant is charged with committing a violent, first-degree felony carrying the potential for a life sentence. *See* TEX. PENAL CODE ANN. §§ 12.32, 20.04(a)(4), (c). Appellant does not dispute he is charged with a serious crime, but argues he has been charged with serious crimes before without absconding. Appellant also points out, and we agree, that the record does not show anything has changed that would create a need for an enhanced bond regarding these factors since the justice of the peace set the original bail.

D. Other Factors

Appellant contends that the other factors the trial court may consider in setting bail such as his work record, family and community ties, length of residency, prior criminal record, conformity with previous bond conditions as well as the existence of any other bonds, any aggravating circumstances of the charged offense, and the punishment range for the charged offense, have not changed since the magistrate set the original bail. *See Rubac*, 611 S.W.2d at 849–50; *Miller*, 442 S.W.3d at 482. Appellant contends all of those factors favor lowering his bond.

We agree the record shows no changes in any of these factors since the original bail was set, but whether they support appellant's case depends upon an

assessment of the credibility of the witnesses who presented such information. Whether the witnesses were credible is a matter for the trial court to resolve. *See Amezquita*, 223 S.W.3d at 367.

Although appellant's family members described him as having substantial ties to North Texas, the record further shows he has been arrested for offenses in Florida, California, and New Jersey. Additionally, in an affidavit attached to the federal criminal complaint, a special agent from the Department of Homeland Security averred appellant drove the complainant to the party in Rockwall County in a 2002 Mercedes automobile registered in New Jersey. We cannot conclude the trial court would have erred in concluding appellant has substantial ties to other places in addition to North Texas.

Conclusion

Appellant contends on appeal that the trial court abused its discretion in failing to grant habeas relief by reducing his $2,000,000 bail to the $250,000 bail originally set by the justice of the peace. Given that appellant's own recorded conversation shows he was prepared to forfeit a $250,000 bond and flee the jurisdiction, we cannot agree that the trial court abused its discretion in failing to reduce bail to $250,000 as appellant requests. *See Rubac*, 611 S.W.2d at 850; *Miller*, 442 S.W.3d at 481.

Furthermore, given that appellant provided no information about his finances, with defense witnesses providing only conclusory opinions about what his family could raise, we cannot conclude he carried his burden to show he was entitled to

reduced bail. *See Rubac*, 611 S.W.2d at 849; *Miller*, 442 S.W.3d at 482. Because appellant failed to carry his burden of proof, we cannot conclude the trial court abused its discretion by denying habeas relief on appellant's pretrial bond. *See Rubac*, 611 S.W.2d at 850; *Miller*, 442 S.W.3d at 481. We overrule appellant's sole issue.

We affirm the trial court's order denying relief on appellant's pretrial application for writ of habeas corpus.

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

EX PARTE ANTHONY TYRONE JOHNSON	On Appeal from the 439th Judicial District Court, Rockwall County, Texas
No. 05-21-00049-CR	Trial Court Cause No. 1-20-1620. Opinion delivered by Chief Justice Burns. Justices Myers and Garcia participating.

Based on the Court's opinion of this date, the order of the trial court denying relief on appellant's pretrial application for writ of habeas corpus is **AFFIRMED**.

Judgment entered December 8, 2021