IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-82,264-03, -04

EX PARTE MIGUEL ANGEL NAVARRO, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 08-DCR-050238 HC2, 10-DCR-050236A HC2
IN THE 240TH DISTRICT COURT
FORT BEND COUNTY

HERVEY, J., filed an opinion in which in which KELLER, P.J., KEASLER, RICHARDSON, YEARY, NEWELL, and KEEL, JJ., joined. ALCALA, J., filed a dissenting opinion in which WALKER, J., joined.

O P I N I O N

In *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), we agreed with the court of appeals that a juvenile court's transfer order waiving its exclusive jurisdiction is subject to legal and factual-sufficiency appellate review. The issues in this case are whether our decision in *Moon* is retroactive, and if so, whether the transfer order in this case was legally and factually insufficient. We do not reach those issues, however, because Navarro has failed to show that his subsequent writ applications satisfy the

Article 11.07 Section 4 subsequent-writ bar of the Texas Code of Criminal Procedure.[1] As a result, we dismiss his writ applications.

BACKGROUND

Navarro was fifteen years old when he was charged with murder and two counts of aggravated assault. He was at a party. When the party got too large, the host told a group of people, including Navarro, to leave because he did not know them. An altercation ensued during which three people were stabbed, including the host, who died at the scene. Navarro fled in a car with his friends and returned to his home later that night. The next morning, detectives showed up at Navarro's home after they were told that he may have stabbed the people at the party. Navarro was eventually taken into custody.

The State asked the juvenile court to waive its exclusive jurisdiction so that Navarro could be tried as an adult. The court granted the request, and Navarro was tried

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[1]This provision governs when a court can consider the merits of a subsequent writ of habeas corpus application. As it pertains to this case, the statute states, in relevant part,

> (a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:
>
> > (1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous applications[.]

TEX. CODE CRIM. PROC. art. 11.07 § 4(a)(1).

in district court. He was convicted of murder and one count of aggravated assault. The jury assessed punishment at ninety-nine years' imprisonment for the murder charge and twenty years' imprisonment for the aggravated assault charge. The judge ordered the sentences to run concurrently.

Navarro filed a timely motion for new trial, which was denied, and his convictions were affirmed on appeal. *Navarro v. State*, Nos. 01-11-00139-CR & 00140-CR, 2012 WL 3776372 (Tex. App.—Houston [1st Dist.] Aug. 30, 2012, pet. ref'd) (mem. op., not designated for publication). Later, he filed his initial writ applications claiming ineffective assistance of counsel. Both applications were denied without written order. *Ex parte Navarro*, Nos. WR-82,264-01 & -02 (Tex. Crim. App. Nov. 26, 2014). Subsequently, Navarro filed federal writ petitions, again claiming ineffective assistance of counsel,[2] but those proceedings were stayed after Navarro filed the instant subsequent writ applications.

Navarro argues that he has satisfied the Section 4 subsequent-writ bar because the legal basis for his sufficiency claim was not recognized, nor could it have been reasonably formulated, when he filed his previously considered writ applications challenging his convictions. He also argues that the decision in *Moon* is retroactive and that the juvenile court's transfer order in his case was deficient because it failed to comply with our

[2]*Navarro v. Stephens*, No. 4:15-CV-00352 (S.D. Tex. filed Feb. 6, 2015).

decision in *Moon*.[3] He further contends that he is entitled to relief because the district court never had jurisdiction over his case because the transfer order is insufficient. We filed and set these applications for submission to resolve,

> (1) Whether [Navarro] may rely on this Court's opinion in *Moon*, and if so,
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> (2) Whether [Navarro] is entitled to habeas relief based on *Moon*.

We do not reach the submission issues, however, because Navarro cannot overcome the subsequent-writ bar. The legal basis for his sufficiency claim was available before *Moon*, including when he filed his initial writ applications challenging his convictions. And even if the legal basis had not already been recognized, Navarro could have reasonably formulated his claim based on United States Supreme Court and Texas appellate court precedent.

ARTICLE 11.07 § 4

Subsequent writ applications challenging a final felony conviction are governed by Article 11.07 § 4 of the Texas Code of Criminal Procedure. Under that statute, a court cannot consider the merits of a subsequent application unless it contains sufficient specific facts establishing that:

> (1) the current claims and issues *have not been and could not have been presented previously* in an original application or in a previously considered application filed under this article *because the factual or legal basis for the claim was unavailable* on the date the applicant filed the previous application; or

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[3]Navarro also asserted that the State relied on false testimony to secure his convictions in light of new scientific evidence that was not available at trial, but that claim was denied.

> (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

TEX. CODE CRIM. PROC. art. 11.07 § 4(a)(1)–(2) (emphasis added).

A legal basis for a claim is "unavailable" for purposes of subsection (a)(1) "if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of" the United States Supreme Court, a United States circuit court of appeals, or an appellate court of this state on or before the date of the applicant's previously considered application. *Id.* art. 11.07 § 4(b). A new factual basis for a claim is unavailable if it was not ascertainable using reasonable diligence on or before the date of the applicant's previously considered application *Id.* art. 11.07 § 4(c).

STANDARD OF REVIEW

The convicting court is the original factfinder, and we afford almost total deference to its findings of facts that are supported by the record. *Ex parte Weinstein*, 421 S.W.3d 656, 664 (Tex. Crim. App. 2014) (citing *Ex parte Chavez*, 371 S.W.3d 200, 207 (Tex. Crim. App. 2012) (quoting *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008)). The same level of deference is afforded to a habeas judge's rulings on mixed questions of law and fact, if the resolution of those ultimate questions turns on an evaluation of credibility and demeanor. *Id.* at 664. However, if after an independent review of the record, we conclude that the trial judge's findings and conclusions are not supported by the record, we may exercise our authority to make contrary or alternative

findings and conclusions. *Id*. When the issues, as in this case, are mixed questions of law and fact that does not turn on credibility and demeanor, we review the findings and conclusions *de novo*. *Id.*

The habeas court found that,

> (1) The juvenile court failed to "show its work" in its written transfer order, as required under Texas law. Tex. Fam. Code § 54.02(h); *Moon v. State*, 451 S.W.3d 28, 49 (Tex. Crim. App. 2014). Specifically, the juvenile court's transfer order fails to specifically state facts on which the juvenile court based its decision to waive jurisdiction. *Id.* at 49.
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> (2) Before *Moon*, [Navarro] could not have reasonably formulated his "show your work" instruction to courts of appeals for transfer orders based on *Kent* or the clear language of Article 54.02(h).

The habeas court recommends that we address the merits of Navarro's subsequent-writ application because he has shown a previously unavailable legal basis for his claim. After our *de novo* review, we disagree with the habeas court's findings and accordingly dismiss Navarro's applications.

ANALYSIS

Navarro contends that his transfer-order sufficiency claim was not a recognized legal basis for relief when he filed his previously considered writ applications and that the claim could not have been reasonably formulated based on the jurisprudence of the United States Supreme Court, the federal circuit courts of appeals, or the appellate courts of this state. For the reasons that follow, we disagree.

United States Supreme Court Precedent

1. The Legal Basis for Navarro's Claim Was Available When He Filed His Last Previously Considered Writ Application

Navarro concedes that the United States Supreme Court addressed the sufficiency of juvenile-transfer orders in *Kent v. United States*, 383 U.S. 541 (1966), but he argues that *Kent* did not recognize the legal basis for his current claim and that his claim could not have been reasonably formulated from *Kent*.[4] According to Navarro, even though that case dealt with the sufficiency of juvenile-transfer orders, it did not impose a "show your work" requirement as we did in *Moon*. The State disagrees, arguing that the legal basis for Navarro's claim was recognized in *Kent* and that, even if *Kent* did not expressly recognize the legal basis upon which Navarro relies, he could have reasonably formulated his claim based on its reasoning because this Court's "show your work" requirement was derived from a quote in that case.[5]

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[4]In addition to the parties' briefs, three amicus briefs have been filed. Texas Appleseed reurges Navarro's argument that his sufficiency claim could not have been reasonably formulated based on *Kent* because our decision in *Moon* imposed new, more onerous requirements. *Pro se* author Jeff Leggett also makes the same argument, but he directs us to Presiding Judge Keller's statements in *Moon*, to support his contentions. The third brief, filed by the Juvenile Law Center, does not address the Section 4 subsequent-writ bar.

[5]Although we discuss *Kent* in more detail, the entirety of the quote from the State's brief reads,

> [The appellate court] must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not assume that there are adequate reasons, nor may it merely assume that full investigation has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the [relevant District of Columbia] statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to

In *Kent*, the Supreme Court held that due process requires juvenile courts to include within their juvenile-transfer orders "a statement of the reasons or considerations therefor" for waiving exclusive jurisdiction. *Id*. The statement need not necessarily be formal or include "conventional findings of fact," but it must be sufficient to demonstrate that a full investigation has occurred, demonstrate that the waiver question was carefully considered by the juvenile court, and "set forth the basis for the order with *sufficient specificity* to permit meaningful review." *Id.* (emphasis added). A few years later, the law in Texas was changed so that, before a juvenile court could waive its exclusive jurisdiction, it must "state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court." *Moon*, 451 S.W.3d at 37 (explaining that the change in Texas law was meant to codify *Kent*); Act of May 26, 1973, 63rd Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1460–77 (codified at TEX. FAM. CODE § 54.02(h)). Based on the foregoing, we conclude the legal basis for Navarro's claim—whether the juvenile-transfer order in his case was insufficient—was recognized in 1966 by the United States Supreme Court.

2. Navarro Could Have Reasonably Formulated His Current Claim Based on Kent

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> demonstrate that the statutory requirement of full investigation has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review.

Kent, 383 U.S. at 561.

Even if we assume, however, that *Kent* did not recognize the legal basis for Navarro's claim, he nevertheless could have reasonably formulated it from the reasoning in *Kent*. In *Moon*, we had to decide the applicable appellate standard of review when reviewing the sufficiency of juvenile-transfer orders. The only reason we had the occasion to answer such a question is because courts were already reviewing the sufficiency of juvenile-transfer orders. And, while we did state in *Moon* that a juvenile court must "show its work" in its transfer order, that merely recognized that a juvenile-transfer order cannot be sufficient if it does not support its waiver with specific reasons explaining why the court is waiving its exclusive jurisdiction. *Moon*, 451 S.W.3d at 47. Importantly, however, we also noted that a juvenile court's findings are reviewed under a "traditional sufficiency of the evidence" standard. *Id.*

Texas Appellate Courts Precedent

1. Texas Appellate Courts Recognized the Legal Basis for Navarro's Claim at Least as Early as 1975

Next, Navarro argues that the legal basis for his claim was not recognized by Texas law before he filed his previously considered writ applications because *Moon* addressed several "previously unresolved questions concerning the specificity required of the juvenile court's transfer order[.]" Applicant's Brief on the Merits at 13 (citing *Guerrero v. State*, 471 S.W.3d 1, 3 (Tex. App.—Houston [14th Dist.] 2014, no pet.)). He concedes that appellate courts have reviewed the sufficiency of juvenile-transfer orders for decades, but he contends that, because appellate courts before *Moon* routinely

affirmed boilerplate juvenile-transfer orders that contained no case-specific evidence, his current claim could not have been reasonably formulated because it would have been summarily rejected. To support the latter assertion, Navarro directs us to Presiding Judge Keller's dissent in *Moon*, in which she stated that, for "almost forty years, the tendency among the courts of appeals has been to hold that a juvenile transfer order need not specify in detail the facts supporting the order." *Moon*, 451 S.W.3d at 52 (Keller, P.J., dissenting).

Navarro's concession that Texas appellate courts have been reviewing the sufficiency of juvenile-transfer orders is a fair one.[6] In *Moon*, we explained that, as far back as 1975, one Texas appellate court had noted that Section 54.02(h) "obviously contemplates that both the juvenile court's reasons for waiving its jurisdiction and the findings of fact that undergird those reasons should appear in the transfer order." *Id.* at 49 (citing *In re J.R.C.*, 522 S.W.2d 579, 582–84 (Tex. Civ. App.—Texarkana 1975, writ ref'd n.r.e.)). In that case, the appellate court recognized that, when drafting Section 54.02 of the Texas Family Code, the legislature was guided by the Supreme Court's *Kent*

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[6] *See, e.g.*, *Rivera v. State*, No. 05-06-00026-CR, 2007 WL 3245610, at *1 (Tex. App.—Dallas Nov. 5, 2007, no pet.) (not designated for publication); *Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.—Tyler 2003, no pet.); *In the Matter of G.F.O.*, 874 S.W.2d 729, 731–32 (Tex. App.—Houston [1st Dist.] 1994, no writ); *Matter of D.L.N.*, 930 S.W.2d 253, 257 (Tex. App.—Houston [14th Dist.] 1996, no writ); *C.M. v. State*, 884 S.W.2d 562, 563 (Tex. App.—San Antonio 1994, no writ); *Matter of T.D.*, 817 S.W.2d 771, 774 (Tex. App.—Houston [1st Dist.] 1991, writ denied); *Matter of C.C.G.*, 805 S.W.2d 10, 15 (Tex. App.—Tyler 1991, writ denied); *Thompson v. State*, 552 S.W.2d 618, 619 (Tex. Civ. App.—Austin 1977, no writ); *Matter of G. B. B.*, 572 S.W.2d 751, 755 (Tex. Civ. App.—El Paso 1978, writ ref'd n.r.e.); *J. D. P. v. State*, 609 S.W.2d 868, 871 (Tex. Civ. App.—Texarkana 1980, no writ).

decision. *In re J.R.C.*, 522 S.W.2d at 583. A statement we reiterated forty-two years later in *Moon*. *Moon*, 451 S.W.3d at 37.

Based on this, we conclude that the legal basis for Navarro's claim—that the transfer-order in his case was insufficient—had been recognized by Texas appellate courts before Navarro filed his claim. *In re J.R.C.*, 522 S.W.2d at 582–84.

2. Navarro Could Have Reasonably Formulated His Current Claim Based on Existing Texas Appellate Court Jurisprudence

According to Navarro, even though Texas appellate courts have entertained sufficiency challenges to juvenile-transfer orders for decades, his claim could not have been reasonably formulated because the courts of appeals routinely denied such claims. Based on the language of the statute, Navarro's argument is without merit. TEX. CODE CRIM. PROC. art. 11.07 § 4(a)(1).

To satisfy the Section 4(a)(1) subsequent-writ bar when claiming a new legal basis, the applicant must show (1) that the legal basis was not recognized *and* (2) that the claim could not have been reasonably formulated from the jurisprudence of the United States Supreme Court, federal circuit courts of appeals, or Texas appellate courts. *Id.* art. 11.07 § 4(b). Even if we assume that Navarro could not have reasonably formulated his sufficiency claim because such claims were routinely denied, he freely admits that the legal basis for his sufficiency challenge was recognized long ago. He has even provided a number of citations. *See Matter of T.D.*, 817 S.W.2d 771, 776–77 (Tex. App.—Houston [1st. Dist.] 1991, writ denied); *In re I.B.*, 619 S.W.2d 584, 587 (Tex. Civ.

App.—Amarillo 1981, no writ); *Appeal of B.Y.*, 585 S.W.2d 349, 351 (Tex. Civ. App.—El Paso 1979, no writ).

The purpose of Section 4(a)(1) is to prevent the abuse of the post-conviction writ process by prohibiting courts from addressing the merits of subsequent-writ applications that raise claims that could have already been raised, either because the legal basis for the claim had already been recognized, or because the claim could have been rationally fashioned from certain jurisprudence even if the legal basis had not yet been recognized. The statute does not, as Navarro argues, allow an applicant to surmount the "new legal basis" subsequent-writ bar by showing that courts frequently deny the claim he seeks to bring. Legal sufficiency challenges are also routinely denied, but when a court enters an acquittal due to insufficient evidence, the court's decision does not constitute a new legal basis allowing defendants an opportunity to raise a sufficiency claim for the first time in a subsequent-writ application. In short, the likelihood of a claim's success is irrelevant to whether the legal basis upon which an applicant relies is considered "new."

Section 4(a)(2)

Navarro also argues that we can consider the merits of his claims through the Section 4(a)(2) innocence gateway. According to him, a defendant has a constitutional right to be convicted by a court of competent jurisdiction, *Frank v. Mangum*, 237 U.S. 309, 326 (1915), and in this case the district court did not have subject-matter jurisdiction because the transfer order waiving the juvenile court's exclusive jurisdiction was

insufficient. Thus, he concludes, he satisfies the Section 4(a)(2) exception because, but for the violation of his federal constitutional right to be convicted by a court of competent jurisdiction, no rational jury could have convicted him. For support, he cites Judge Alcala's dissenting opinion in *Ex parte Sledge*, 391 S.W.3d 104, 116 (Tex. Crim. App. 2013) (Alcala, J., dissenting), in which she made an identical argument.[7] The State responds that Judge Alcala's opinion is not controlling law because her opinion was a dissent. It further contends that the Court has already rejected Navarro's argument in *Sledge*, and since Section 4(a)(2) has not been modified subsequent to *Sledge*, Navarro's argument is without merit.[8] For its part, the habeas court concluded that an error under *Moon* is jurisdictional, that such claim "can never be waived," and that the judgment of conviction in this case is void.

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[7]Although Navarro relies on Judge Alcala's dissenting opinion in *Sledge* for the proposition that a jurisdictional claim can be raised in a subsequent writ application, he also argues that *Sledge* "did not involve a jurisdictional claim" and that "as the Court later stressed in *Moss*, there is a crucial difference between a claim involving constitutional rights that can be forfeited on habeas corpus due to lack of action and a claim based upon lack of jurisdiction, which cannot be forfeited." Applicant's Brief on the Merits at 34 n.8.

A cursory examination of our decision in *Sledge*, however, shows that the only claim advanced in that case was a jurisdictional one. As for Navarro's contention regarding *Moss*, we disagree. If anything, in *Moss* we reaffirmed our holding in *Sledge* when we stated that "we caution individuals seeking habeas relief in a subsequent writ application that *Sledge* continues to bar an applicant from obtaining relief on a jurisdictional claim in a subsequent application if the applicant cannot overcome applicable procedural bars." *Ex parte Moss*, 446 S.W.3d 786, 789–90 (Tex. Crim. App. 2014).

[8]The State also raises some statutory arguments to support its position, but we need not address those given our disposition of this issue based on our decision in *Sledge*.

In *Ex parte Sledge*, Sledge alleged in a subsequent writ application that the court lacked subject-matter jurisdiction to revoke his deferred-adjudication supervision because it did so based on a capias issued after the period of supervision had expired. *Id.* at 105–06. We concluded that we could not consider the merits of his jurisdictional argument in his subsequent writ application because Sledge did not assert a new legal or factual basis under Section 4(a)(1) of the abuse-of-writ bar. *Id.* at 106–07. We also addressed the innocence-gateway exception because it was raised by Judge Alcala in her dissent. *Id.* at 110–11. Judge Alcala would have held that Sledge met the innocence-gateway exception under Section 4(a)(2) because, but for the violation of his federal constitutional right to be tried by a court of competent jurisdiction, the judge could not have found him guilty beyond a reasonable doubt. *Id.* at 116–17 (Alcala, J., dissenting). As Navarro does, Judge Alcala relied on *Mangum* to support her position.

The State correctly points out, however, that the majority in *Sledge* considered Judge Alcala's argument (which Navarro is now reurging) and rejected it because, even if Sledge had alleged sufficient specific facts to show that the court's lack of subject-matter jurisdiction was constitutional error, he still could not meet the Section 4(a)(2) innocence-gateway because he did not also allege sufficient specific facts to show that he is actually innocent of the offense. *Id.* at 107 n.14; *Brooks*, 219 S.W.3d 396, 401 (Tex. Crim. App. 2007). Unlike Sledge, Navarro has alleged that he suffered a constitutional violation, but like Sledge, Navarro does not claim that he is actually innocent of the offense. Thus,

based on our decision in *Sledge*, we are precluded from addressing the merits of Navarro's claims under Section 4(a)(2). *Sledge*, 391 S.W.3d at 116 at 107; *Brooks*, 219 S.W.3d at 401.

CONCLUSION

Because Navarro cannot overcome the subsequent-writ bar in this case, we do not reach the merits of his post-conviction writ application, and we dismiss his applications for writs of habeas corpus.

Delivered: January 10, 2018

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