

No. 0720173-A

EX PARTE § IN THE 177th DISTRICT COURT
 § OF
 JAIME VASQUEZ § HARRIS COUNTY, TEXAS

**COURT'S PROPOSED FINDINGS OF FACT,
 CONCLUSIONS OF LAW, AND ORDER**

The Court, having considered the applicant's application for writ of habeas corpus, the respondent's answer, all exhibits attached to said documents or filed in relation to said documents, and official court documents and records in cause numbers 720173 and 720173-A, including the hearing on the instant application, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Procedural History

1. The State charged applicant with aggravated sexual assault of a child and indecency with a child in cause number 720173, in the 177th District Court of Harris County, Texas.
 - a. The State originally charged applicant in a single indictment with: (1) aggravated sexual assault by intentionally and knowingly causing the penetration of the female sexual organ of Krystal Stephanie Rocha, a child younger than fourteen, by placing his finger in her sexual organ; and (2) indecency with a child by contact by intentionally and knowingly touching the genitals of Rocha, a child younger than seventeen and not his spouse, with the intent to arouse and gratify his sexual desires.
2. On March 14, 1997, applicant pled guilty to the felony offense of indecency with a child by contact.
3. The court deferred any finding of guilt and placed applicant on community supervision for 6 years.
4. There was no direct appeal.

5. Applicant successfully completed community supervision and this Court terminated it on March 18, 2003.
6. The Applicant is “confined and restrained” as a result of the instant conviction because he “(1) was deported from the United States because he was ineligible for any immigration relief; (2) cannot legally enter or remain in the United States’ and (3) is required to register as a sex offender for life.” *Application for Writ of Habeas Corpus at 2.*
7. A Federal Immigration Court ordered applicant removed from the United States to Mexico on April 17, 2000. *Applicant’s Exhibit 5.*
8. Applicant appealed the order of removal. On May 20, 2004 the U.S. Department of Justice denied Applicant’s motion and affirm the Immigration Judge’s determination that the Applicant is subject to removal. The Order states,

The [Applicant] argues that he has not been “convicted” within the meaning of the Act...The [Applicant’s] deferred adjudication is a conviction under the Act; the [Applicant] has given no other indication that his plea was anything other than a knowing, intelligent and voluntary one. The remaining appellate argument raised by the [Applicant] is unconvincing and meritless.

9. Applicant filed the instant application on September 23, 2014.

Factual History

10. The Court finds the following facts proven by a preponderance of evidence based on testimony and/or documentary evidence filed with the clerk or filed during the hearing on the instant application, including applicant’s exhibits filed under seal:

- a. Background**

- i. Krystal is Maria’s daughter. Her father has never been active in her life.
 - ii. Maria is married to applicant and has been married to applicant since long before the instant allegation arose.
 - iii. Maria has two sons that are both older than Krystal—Ernest Rocha (“Ernest”) and Erik Rocha (“Eric”).

- iv. Applicant has been Krystal's father figure since she was around two years old.
- v. Applicant began living with Maria and the children when Krystal was very young.
- vi. Maria talked to the children about sexual molestation much more frequently than most parents would, to the point that she often made the children watch videos about date rape and severely limited Krystal's ability to spend time with any males once Krystal reached a certain age.

b. Arrest

- i. Applicant was arrested based upon a statement by his stepdaughter to Maria that he "sort of" touched her.
- ii. Krystal made the statement after Maria once again confronted her about sexual molestation.
- iii. Maria began listing all of the males in Krystal's household, to which Krystal replied "no" until responding "sort of" when Maria said applicant's name.
- iv. Pursuant to Krystal's statement, Maria called the police.

c. Charges, plea, and subsequent information

- i. Applicant spoke Spanish, and some English, when he was arrested.
- ii. Applicant's pretrial interview indicates it was conducted in English.
- iii. Maria hired Delaney to represent applicant because Delaney had assisted someone she knew with a legal issue.
- iv. Delaney does not speak, and has never spoken, Spanish.
- v. Delaney recalls appearing in court for applicant.
- vi. Delaney recalls that sometimes he would just reset applicant's case and leave, and other times he would review the State's file if the State made it available.
- vii. Despite Delaney's inability to remember the details of applicant's case, he testified about his general practice at the relevant time.

- viii. Delaney's general practice would have been to look at the State's file if it was made available to him and tell his client what he was charged with.
 - ix. Delaney was asked to explain the tasks he would have generally done to investigate a charge like applicant's.
 - x. United States District Judge Sim Lake recently found that, in light of Krystal's and Maria's affidavits, as well as other affidavits and documents that have been submitted to this Court, the judgment in this case significantly overstates the seriousness of applicant's conviction.
- d. Applicant was in federal custody, and then deported and out of the country, for years between his plea and the date he filed the instant application. The applicant filed the instant habeas application on September 23, 2014, seventeen (17) years after his plea of guilty and the complainant's initial recantation, fourteen (14) years after Defense Counsel stopped practicing law and ten (10) years after the Federal Court's final order.

CONCLUSIONS OF LAW

The court does not find the testimony of Krystal Stephanie Rocha or Maria Esther Vasquez to be entirely credible nor persuasive. The Court finds Applicant's claims are incredibly self-serving. The Court finds George Delany credible, yet not entirely beneficial because of his destruction of records in this case, and his recollection.

1. Krystal's recantation is not new evidence.
2. Krystal makes inconsistent statements regarding when and to whom she told about her recantation.
3. According to documentation included in the State's file, Krystal recanted to the Child Protective Services counselor, the Prosecutor and her mother, Mrs. Vasquez, prior to the date of Applicant's plea of guilty.
4. According to the credible affidavit of Devon Anderson, Mrs. Anderson is the prosecutor who interviewed the Complainant on March 13, 1997, prior to the Applicant's plea of guilty, as evidenced by her handwriting and her initials "DW."

Mrs. Anderson is the prosecutor who wrote "CW recanted" on the inside of the State's file, in plain view.

5. According to Maria's testimony, Maria is the individual who hired Mr. Delaney. She was in communication with Delaney. At least twice, Delaney went out to Maria's home. She knew that her daughter recanted and doubted that the sexual abuse occurred. Maria has always wanted Applicant home with her.
6. According to documentation in the State's file Maria told the Prosecutors as well as the Child Protective Services on several separate occasions that she is in denial about the crime, that the sexual abuse did not occur, that she thinks Krystal is lying and that the complainant recanted.
7. Maria's affidavit is in direct contradiction to her testimony and to the State's file.
8. There is no indication from the evidence that Krystal's recantation was hidden from the defense.
9. There is no indication from the evidence that Krystal's recantation was solely in the possession of the State of Texas.
10. The applicant failed to demonstrate that there is newly-discovered evidence.

Applicant's First Ground for relief is denied.

Applicant is unable to show that Delany was ineffective. Delany's testimony, prosecutor affidavits, pretrial paperwork and the plea papers shed little to no light on the claims raised by Applicant. He is unable to meet his burden on these grounds. Most persuasive to the Court is the affidavit from Denise Bradley, which reads in part:

"Judge Davies was very thorough during pleas of guilty, making sure the person standing in front of her understood the allegations against them, the rights they were giving up and the effect a plea of guilty may have. If there was any indication that the person did not understand what was going on at any time it is [Denise Bradley's] belief based on [her] experience with Judge Davies that [Judge Davies] would have corrected the problem immediately."

Applicant's Second and Third Grounds for Relief are denied.

If however, a reviewing Court finds that there is merit to the claims made by the Applicant, the Court finds that under the doctrine of Laches, determining the details of the plea

bargain, discussions among parties, and reprosecuting the case-in-chief are difficult and prejudice the State. "Given the nature of habeas corpus relief, it is reasonable to permit a court to consider whether an applicant has slept on his rights and, if he has, how that has affected the State, and whether, in light of the delay, it is fair and just to grant him relief." Ex Parte Perez, 398 S.W.3d 206, 218-19 (Tex. Crim. App. 2013).

FINDINGS UNDER THE DOCTRINE OF LACHES

1. According to the credible affidavit and testimony of George Delaney, the significant passage of time has inhibited his ability to respond to Applicant's claims, both because his memory has faded over the eighteen (18) years it has taken applicant to file this Writ of Habeas Corpus and because Mr. Delaney's files have been destroyed for at least seven (7) years making it impossible for Mr. Delaney to review any documentation he may have had regarding the Applicant's claims. Mr. Delaney is only able to generally respond to Applicant's claims based on his standard practice as a defense attorney.
2. According to the credible affidavit of Devon Anderson, the significant passage of time has limited her ability to respond to Applicant's claims. Mrs. Anderson has no independent recollection of this case or of any discussions related to this case with Mr. Delaney. Mrs. Anderson is able to confirm that she is one of the prosecutors that handled this case based on identifying her handwriting and her initials, "DW," throughout the file. Mrs. Anderson is only able to respond to Applicant's first ground for relief based on her notes in the file and her standard practice as a prosecutor to comply with any and all *Brady* requirements. Mrs. Anderson is unable to respond to any other claims made by the Applicant due to the significant delay in Applicant's filing.
3. According to the credible affidavit of Denise Bradley, the significant passage of time has made it impossible for her to have any independent recollection of this case. She is able to say that she was assigned to the 177th District Court while Judge Davies was on the bench and that her name at that time was Denise Nassar, seen on the front of the State's file and on the plea paperwork. Mrs. Bradley is unable to answer any of the specific claims the Applicant has made due to the Applicant's delay in pursuing his claim.
4. According to the testimony of Krystal, the Applicant and the family have been dealing with this issue consistently since the Applicant was charged in 1996. In 1996 or 1997, Ms. Rocha was removed from the Applicant's home where she had lived all her life. In 2003, the Applicant was deported from the United States. Ms. Rocha indicated this event was "devastating" to her and her family, as they thought everything was over. Ms. Rocha testified that she was involved in the federal proceedings and did submit a letter on behalf of the Applicant. Ms. Rocha stated the claim was "hopeless." Most significantly, Ms. Rocha stated that she has been proclaiming Applicant's innocence anytime the case was brought up since *before* Applicant pled guilty.

5. Applicant's unreasonable delay in filing this claim has prejudiced the State in its ability to respond and has placed the State in a less favorable position due to the significant passage of time caused by Applicant's unreasonable delay in filing this claim.

In the alternative, **Applicant's claim for habeas relief is denied based on the equitable Doctrine of Laches.**

Therefore, the Court finds that relief is denied on all grounds.

BY THE FOLLOWING SIGNATURE, THE COURT ADOPTS APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CAUSE NO. 720173-A.

Date: 8/11/15

A handwritten signature in black ink, appearing to read 'R. Patrick', written over a horizontal line.

HON. RYAN PATRICK
Presiding Judge
177th District Court
Harris County, Texas