

Ken J. McLean

ATTORNEY AT LAW
1900 NORTH LOOP WEST
SUITE 500
HOUSTON, TEXAS 77018
713/680-9922

**CLIENT'S
COPY**

June 7, 1986

Mr. John DeLeon
101 North Glass
209521 H-1
Victoria, Texas 77901

RE: Motion To Rehear Denial Of Application For
Habeas Corpus Relief

Dear John:

Enclosed is a copy of our Motion For Rehearing. The Court, on June 4, 1986, denied relief on our original application. This does not mean they will deny relief on this Motion For Rehearing. If they do, I will petition For Certiorari in the Supreme Court of the United States.

The facts are in our favor and so is the law. I have confidence the Court will still rule with us. Do not despair or lose faith.

Yours very truly,

Ken McLean

KEN J. MCLEAN

KJM/aw
Enclos.

cc: Mr. & Mrs. Jose Ronje
Mrs. Imelda DeLeon

FILE COPY

IN THE
24TH JUDICIAL DISTRICT COURT
OF VICTORIA COUNTY, TEXAS
TRIAL COURT NO. 84-3-11,464-B

EX PARTE

JOHN DELEON,

Applicant

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§

WRIT NO. 15,087-03

MOTION TO REHEAR THE DENIAL WITHOUT WRITTEN ORDER
OF APPLICANT'S WRIT OF HABEAS CORPUS

KEN J. MCLEAN
State Bar No. 13747700

1900 North Loop West, Suite 500
Houston, Texas 77018
(713) 680-9922

Attorney for Applicant
JOHN DELEON

June 7, 1986

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OF VICTORIA COUNTY, TEXAS
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TO THE HONORABLE TEXAS COURT OF CRIMINAL APPEALS, AUSTIN, TEXAS:

COMES NOW, JOHN DELEON, Applicant in the above styled and numbered writ, and makes this his motion to rehear the denial of his Writ of Habeas Corpus; and, in respect thereto, applicant would respectfully show the Court the following:

PROCEDURAL HISTORY

On June 4, 1986, this Court denied without written order the application for Writ of Habeas Corpus on behalf of the applicant. Notwithstanding the provisions of Tex.Cr.App.R.313(c), applicant proceeds to file this motion to rehear because of the important and significant State and Federal constitutional issue herein presented.

THE COMPLAINT

Applicant claims, and the evidence supports it, that his trial counsel was ineffective for failing to investigate the state of his, applicant's, mental health on or about the time of the offense which, if known by the sentencer, would have caused mitigation of the penalty herein. Your undersigned and counsel for the State both agreed that testimony of Mrs. DeLeon was true, correct and credible regarding the attempt at suicide by firearm within 10 days of the offense. By denying the application, the Court explicitly found that (1) an attempt at suicide by firearm does not reflect that one is under the influence of extreme mental or emotional disturbance, *Strickland v. Washington*, 80 L.Ed. 2d 674, at 686 (1984); (2) if it did, applicant spontaneously recovered therefrom; (3) and, if the evidence did reflect that applicant was under the influence of extreme mental or emotional disturbance at the time of the offense, it would have not swayed the trial judge to mitigate the punishment.

If this Court reasons that the trial judge thought "15 years was pretty light anyway", and this is tantamount to a discussion about his mental process in reaching a judicial decision, then such analysis violates *Fayerweather v. Ritch*, 195 U.S. 276, 25 S.Ct. 58, 49 L.Ed. 193 (1904); *U.S. v. Crouch*, 566 F.2d 1311, 1316 (5th Cir. 1975).

It is beyond peradventure that counsel is ineffective for failing to investigate the lawsuit; however, if there is no harm attendant thereto, the 2-prong standard of Strickland is not satisfied.

After consultation with three renowned Houston medical physicians, the following was gleaned:

Suicide, attempted suicide, and suicidal ideation represent a spectrum of pathologic management of intractable psychological pain associated with a constellation of negative feelings typified by low self-esteem. The individual experiencing suicidal tendency not only constitutes a medical and psychiatric emergency, but additionally harbors characterological defects which neither resolve spontaneously nor heal with wishful thinking; indeed, without the administration of psychotherapy, the suicidal individual is locked into a mind-set flooded with feelings of inadequacy, helplessness, hopelessness, pain, and low self-esteem. The treatment of an individual who feels he has no self-worth requires an intensive professional therapeutic commitment centered upon a timely and gradual construction of accomplishments which build self-esteem. One would no sooner expect a case of leprosy to "come and go" or "disappear with time".

THE PREJUDICE

According to Strickland, supra, at 686, a defendant, to be entitled to mitigation of penalty, one must have been under the influence of extreme mental or emotional disturbance on or about the time of the offense. Here, the prosecution agreed that the averments in the Agreed Statement of Facts were true, correct, and credible; therefore, there was no dispute reference the attempt at suicide by applicant before and after the commission of the offense. Why, then, is applicant not entitled to sentencing anew? Is the issue too novel? The prosecution, explicitly agreeing with applicant, never contested one issue herein.

The evidence, if made known to the Court, would have been material on the issue of punishment. Strickland, supra, at 698.

The question to be answered here on the issue of prejudice is whether there is a reasonable probability that, had the information reference the applicant being under the influence of extreme mental and emotional disturbance on or about the time of the offense been known by the sentencer - would he have concluded that all the circumstances did not warrant a fifteen (15) year sentence for this 21-year old young man.

Here, the totality of the evidence before the sentencer was, indeed, unclear. There was no pre-sentence report, which concerned the trial judge terribly. There was no evidence of

applicant's mental or emotional health, which we know, now was, at best, poor.

What could trial counsel have offered at the sentencing hearing? The testimony of applicant's mother concerning the attempted suicide, which would have included the reasons therefore. Perhaps a pre-sentence report would have brought the issue to the fore. This is clearly critical because of the absence of aggravating circumstances.

For the reasons here in advanced, applicant requests that the Court grant relief by remanding this cause for a new sentencing hearing.

Respectfully submitted,



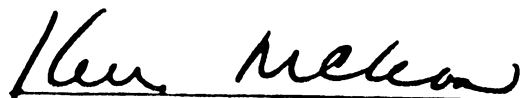
KEN J. MCLEAN
State Bar No. 13747700

1900 North Loop West, Suite 500
Houston, Texas 77018
713/680-9922

Attorney for Applicant
JOHN DeLEON

CERTIFICATE OF SERVICE

I, Ken J. McLean, do hereby certify that a true and correct copy of the foregoing was forwarded by U.S. mail, postage prepaid, on the 7th day of June, 1986, to Honorable George Filley, III, Criminal District Attorney, P. O. Box 488, Victoria, Texas 77902.



KEN J. MCLEAN

Ken J. McLean

ATTORNEY AT LAW
1900 NORTH LOOP WEST
SUITE 500
HOUSTON, TEXAS 77018
713/680-9922

June 30, 1986

Mr. & Mrs. Jose Ronje
4525 Vestal
Corpus Christi, Texas 78416

Mrs. Imelda DeLeon
4946 Kathy
Corpus Christi, Texas 78411

Re: Ex Parte John DeLeon, Application for Habeas Corpus Relief at
State Level, Writ No. 15,087-03
Petition for Certiorari in the Supreme Court of the United
States, Washington, D.C.

Dear Mr. & Mrs. Ronje:

On the 4th day of June, 1986, the Texas Court of Criminal Appeals, a state court, as opposed to a federal court, denied without written order the application for habeas corpus relief. I filed a Motion To Rehear this denial; it was denied on the 17th day of June, 1986. I received notice of same on the 26th day of June, 1986. In short, this means we lost in the state courts.

I remember telling you, your wife, and Imelda that this was a clear-cut case and that we would win. I thought this would occur at the state court level. It has not happened. The only explanation I can give you is the appellate judges on the Texas Court of Criminal Appeals are intellectually inferior or, put another way, obtuse. Clearly, I misjudged their capabilities of a fair and impartial reflection upon the issue involved. I have already prepared for filing a Petition for Certiorari in the Supreme Court of the United States, Washington, D.C.

It is absolutely clear to me that you, Eloise, and Imelda are totally disenchanted with my representation of John. If I understand your feelings, it is because the desired result, a new sentence of five (5) years, is long overdue. I made a special trip to Victoria on the 18th day of June to see John and Mr. Filley, the District Attorney. I attempted to get him, Mr. Filley, to agree to allow me to file an Out-of-Time Motion For a New Trial, which would be granted, and then sentence John to the five (5) years. He would not agree. He indicated he would go

Mr. & Mrs. Jose Ronje
Mrs. Imelda DeLeon
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along with that if some appellate court remanded the case for a new penalty hearing. John appears to understand the problem. I'm sorry that you do not. It is obvious to me that I have failed to properly explain the predicament we face in appealing a plea of guilty. To be sure, I'm not saying that this case will not be won, for I believe that it will. The question is when.

The Supreme Court of the United States may accept this case for disposition - decide it - or they may not. If they do not, it will be because they want a United States District Court to do the job. I hope this does not happen as I will be forced to file what is called a §2254 Application for Habeas Corpus Relief in the United States District Court, Southern District, Corpus Christi Division, which is a writ claiming a violation of some federal constitutional right in behalf of a state prisoner. In our instance, the writ would claim that John's rights under the Sixth and Fourteenth Amendments to the United States Constitution have been violated, namely, the right to effective assistance of counsel at the penalty stage of his trial. I, of course, have been claiming this in the state courts. This simply takes longer. It does not necessarily take long for me to complete my work, but it takes time for some federal court to act. Then, one may appeal to the United States Court of Appeals for the Fifth Circuit, a federal appeals court. I am hopeful that we do not have to do that.

I would like to return to your dissatisfaction with me. I must say, that in thirteen years of practicing trial, appellate, and habeas law, that no one has ever displayed the discontent that I perceive in you. Frankly, I find it terribly misplaced and don't mind saying so. I will be glad to talk to anyone regarding my representation of John, in person or over the phone, if the conversation is reasonable and not streaked with emotionalism. If I got emotional everytime some judge, trial or appellate, did something I perceived to be totally erroneous, I would be worthless to my client. Candidly, if you think my representation of John is ineffective, please call some lawyer in Corpus Christi you trust, and have him call me. I will be more than glad to discuss the matter with him. Or better yet, call some judge in Corpus Christi you have faith in; I will be more than happy to talk with him.

Mr. & Mrs. Jose Ronje
Mrs. Imelda DeLeon
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In sum, I will not be put off by an absolutely incorrect analysis of the problem by some judges on the Texas Court of Criminal Appeals. I will have the Petition For Certiorari filed in the Supreme Court by the 5th day of July, 1986. I assure you that I will do whatever is necessary to see that John gets the five (5) year sentence he deserves.

Yours very truly,

A handwritten signature in cursive script that reads "Ken McLean".

KEN J. MCLEAN

KJM:aw

cc: John DeLeon

Jose Ronje

GRIEVANCE FORM

PART A: INFORMATION ABOUT YOU - PLEASE KEEP CURRENT

1. FULL NAME: RONJE, JOSE G.
2. HOME ADDRESS: 4525 VESTAL ST. CORPUS CHRISTI TX. 78416
CITY CORPUS CHRISTI STATE TEXAS ZIP 78416 PHONE 8532450 AC 512
3. EMPLOYER: NOT EMPLOYED PRESENTLY
4. WORK ADDRESS: _____
CITY _____ STATE _____ ZIP _____ PHONE _____
5. [REDACTED] DATE OF BIRTH: MAR. 20, 1925
DRIVER'S LICENSE NUMBER: 9883 9909
6. NAME OF PERSON WHO CAN ALWAYS REACH YOU: WIFE MRS JOSE RONJE
ADDRESS: 4525 VESTAL ST. CORPUS CHRISTI TX. 78416 PHONE 853 2450 512

PART B: INFORMATION ABOUT ATTORNEY

1. NAME: KEN J MC LEAN. ATTORNEY AT LAW
2. ADDRESS: 1900 NORTH LOOP WEST SUITE 500 HOUSTON TX. 77018
CITY HOUSTON STATE TEXAS ZIP 77018 PHONE 713 680 9922
3. When did you hire this attorney? NOVEMBER 1984
4. What did you hire the attorney to do for you? _____
5. What was your fee arrangement with the attorney? _____

FOR STATE BAR USE ONLY

Grievance Number: _____

Date Received: _____

PART C: INFORMATION ABOUT YOUR GRIEVANCE

State in detail why you think this attorney has done something improper or has failed to do something which this attorney should have done. Include the names and addresses of all persons who know something about your grievance. Attach copies of all court papers, cancelled checks or receipts showing payment of attorney's fees, and other documents relevant to your grievance. Attach additional sheets of paper if you do not have room below to explain your grievance.

I hereby expressly waive any attorney-client privilege as to the attorney the subject of this grievance and authorize such attorney to reveal any information obtained in the professional relationship to the State Bar of Texas.

DATE OF SIGNING: _____

SIGNATURE

RETURN FORM TO:

OFFICE OF THE GENERAL COUNSEL
STATE BAR OF TEXAS
1121 WALKER, SUITE 700
HOUSTON, TX 77002