

March/2/2013;Time 1:05 Pm.

Polunky Unit
3872 Fm 350 South,Livingston,Tx.U.S.

The State of Texas are Capable given me an Ejecution date,to prevent this happening I need focus at the two fundamental Claims of my case,the which consist as follow:

AMENDED CLAIM ONE

I was under eighteen years of age at the time of the offense of which,I was convicted and sentenced to death,the imposition of the sentence by the Texas Court is a violation of my right under the Eighth and Fourteenth Amendments of th U.S.Constitution .

The following facts support this Claim:

I am a citizen of Nicaragua and my real date of Birth is August,20,1979.

I immigrated to U.S. in (1994) to the age of (15 years).and I had difficulties,finding work,to rent,to cash checks.Because I was a minor without documents.(see Exhibit A. My original Birth Certificate),

My life would change daily in a sad story each day,hard to survive because my inability to find work and not have money buy food to eat,sometimes I'm sleep in the strets.For that reason,the same year in (1994) I got in contact with my grandmother and explained my situation.I asked her to send me the Birth Certificate of my older Brother.My Grandmother could not travel to the city of chichigalpa to request the original because she was very ill with arthritis in her knees and had difficulty walking,for this reason she decided to [M]ake a new re-affirmation of my older Brother, in the local registra's office close to her house (at the town of Posoltega in 1994)

and it was that which she send me(see,attaching Exhibit B and Exhibit "C"

The same document specifically or,/to specify,that was not the original Birth Certified,just a re-affirmation² it was this document that I used to take out a Texas ID (identification card)³.,and that explain why the dates of my older brother to appear in my/(ID card)(see attaching Exhibit D.)and explain why my trial attorney also presented a re-affirmation with these same dates.

All these factor explain why the the State of Texas,convicted me to death under my older Brother identity.

In my trial at the year (2000).I testifies that I was (24 years).[b]ecause [during many years...] "I live with false ASSUMPTION OR/ FALSE PRETENSE OF AGE AND WITH TIME,that:INFORMATION :"(STAYED [I]NGRAINED IN MY MIND)" That explain why when they asked for my age,IT'S LOGICAL that I responded in a :

[S]pontaneous mane[r] that I was 24 yrs old age.

EMPHASIS ADD:Besides in the year (2000) I don't it in mind TO CLARIFY my true age because that year, the State of Texas WERE SENTENCING ALL PRISONERS TO DEATH WITH CAPITAL CASE!"[E]VEN" PRISONER UNDER OF 18 YEARS

<> This document is what is known as a "copied" or "partially" a true birth inscription used to simply "verify" the information already contained in the original birth inscription of (Honduras city)

<> The FBI do not discovered any evidence pertaining my birth Certificate the FBI only discovered the same dates of my older brother to appear in my ID (Identification Card, see Exhibit "K")

In the year (2000) The U.S. Supreme Court prohibited the execution of offender under 18 yrs at the time of the offense, It was a restropective ruling linked with my conviction and death sentence in the year (2000)

I was under 18 years at the time of the offense and it is LOGICAL became a: Priority to clarify my true age, so I bringing it to the Court's attention to prove the fact.

The State District Attorney (D.A.) argue that: Nicaragua law allows an individual to modified a Birth Certificate through Judicial action.

This is not true because the term "modified to signify alteration" and it's AGAINST THE LAW OF NICARAGUA. The what really occurred was a CLARIFICATION OF MY IDENTITY through Judicial action, IT DO NOT IN ANY WAY MODIFIED OR/ ALTERATION BECAUSE DID NOT ALTER THE INFORMATION OF MY ORIGINAL INSCRIPTIONS.

The clarification was annotated on my Birth Certificate because it was linked to my information the link was the following: My older brother had the same name (Bernardo) and I receive the same name as traditional culture at Nicaragua and the birth date was the same with the exception of the year and date of registration. The clarification made the rectification and annotation Tha my older brother was a separate individual and not me.

to suport this Claim my attorney receive an AFFIDAVIT OR/EXPERT TESTIMONY OF NICARAGUAN DISTRICT JUDGE MARTHA ROSA NAVARRETE M., RELATE OR/PERTAIN TO THE CLARIFICATION OF MY IDENTITY. This, affidavit, it is key of the fact"

See the (attaching "Exhibit" E)

On Nov. Ms. Norma Villanueva (investigator appointed by U.S. Distric Court on November, 2007) traveled to Nicaragua and conducted an exhaustive investigation, Ms. Villanueva ; conducted face to face interviews of numerous Nicaraguan Officials and with a view toward clarification my Claim she made a close personal examination of the Original microfiches record and confirmed the authenticity of the two Original inscriptions. Based upon the results of Ms. Villanueva very through investigation, On June, 2008 my attorney file a reply to the State, accompanied by a detail affidavit from Ms. Villanueva. see (attaching exhibit G), setting forth the results of her investigation, in Nicaragua and affidavits of six of my family member, friends see (attaching Exhibit, 1 through, 6) and two birth Certificate prepared by the Nicaragua Government who attested to her investigation in my background (see Attaching Exhibit I, J), The Nicaragua Supreme Court Certified all this affidavits)

On Feb, 15, 2013 The U.S. District Court issued an Order directing the parties to submit additional briefing on my Simmons Claim., and I request to my Attorney to submit the Affidavit of Nicaraguan Distric Judge M. Navarrete., and my Testimony relate my Claim. But my Attorney at his letter tell me that: he can't submit the affidavit of the judge Navarrete, because under the recent U.S. Supreme Court case of (Cullen v. Pinholster) a Federal Court is prohibited from considering any evidence that was not presented to the State Court

ON REPLY, I TOLD MY ATTORNEY THAT I NEED TO SUBMIT ALL THOSE EVIDENCE BECAUSE THE (CULLEN V. PINHOLSTER) RULING SHOULD NOT BE RELEVANT IN PREVENTING THE EVIDENCE BEING CONSIDERED, SINCE THEY RELATE NOT MY GUILT OR, / INNOCENCE., MY CLAIM IT'S A MATTER OF FACT FUNDAMENTAL TO THE CONSTITUTION, IT'S A MATTER OF CONSTITUTIONAL VIOLATION CONCERNING ELIGIBILITY FOR DEATH PENALTY.

Also I told him that anyways, he already submitted the affidavit of my grandmother, what's the difference?, if he submit my testimony and the Nicaragua District Judges as well? plus will be on the record, if I have to appeal to the U.S. Supreme Court, without this evidence my claim would be incomplete but he do not to submit these evidence.

It is clearly unreasonable for a state and U.S. District Court to dismiss this evidence without granting a full and fair hearing to me and giving the the parties a full and fair opportunity to test each other's evidence through cross-examination in an open forum. My Claim raises a disquieting argument that the constitution absolutely precludes my execution.

EMPHASIS ADD: I SUPPORTS MY CLAIM ~~with affidavit from several individuals whose account~~, particularly relating to an older brother, HAVE NOT YET BEEN TESTED OR, / REFUTE see "Order, D.C. Docket No. 62. at 9 (emphasis supplied)"

CLAIM TWO

(Ineffectiveness of appellate Counsel)

The failure of James Sidney Crowley, counsel of the record in my Motion for new Trial and counsel on my appeal of the conviction and death sentence, to raise the issue of the trial court's denial of my motion for new trial based upon prosecutorial misconduct fell so far below the standard of care required of counsel handling appeals in capital cases as to constitute ineffective assistance of counsel and a denial my rights under 6th, 14th Amendments of the U.S. Const.

The following fact support this claim: The State qualified my case in the range of Capital murder alleging that I committed a murder intentionally and premeditated during the transcourse of a robbery, to support they utilized the statements of (6) witnesses but ONLY ONE (Michelle Johnson) assure that she see the fact of the crime scene.

This witness was instructed by the prosecutor of the state to lie: professionally and describe in detail the suppose form that, I utilized the weapon to shoot intentionally in the back area of head of the victim.

I testified that it was not my intention to kill anybody and the victim was who "advance toward me" provoking a fight for the control of the weapon and that it was discharged accidentally when the victim pulled the weapon to the left side of his head, "that explain why the shoot was to the left side of his neck and not directly in the back of the head like the state witness affirm "The jury did not believed me, because "no" witness support "my testimony"

March, 2, 2013

On November, 20, 2000, My counsel filed a Motion for new Trial, alleging prosecutorial misconduct based upon statements obtained from Silvia Cotera, M. Lucinda Alvarado, and Idalia Lima that alleged the prosecutor and law enforcement had told her and other witness: NOT TO DISCLOSE IN HER TESTIMONY THAT SHE HAD SEEN ME STRUGGLING WITH THE VICTIM AND THAT SHE HAD SPOKEN WITH ME ON THE DAY AFTER THE OFFENSE WAS COMMITTED AND I DISCLOSED TO HER THAT I HAD NOT INTENDED TO KILL ANYONE.

ALSO Ms. Silvia Cotera assure that she was victim of judicial manipulation and coercion. My counsel provided ineffective assistance when he ignored my directive to call a witness, Silvia Cotera at the Motion for New Trial.

AT the direction of the Court, Mr. Villarreal (Trial attorney) did not conduct the hearing. Instead, my case was assigned to James Sidney Crowley, Tex. Bar No. 05170200, who the Court had appointed to represent me, in the appeal of my conviction to the Court Criminal Appeals.

On December, 18, 2000 the Trial Court held a hearing on my Motion for a New trial and after hearing testimony from witnesses on both sides, the court denied my Motion., and the JURY never have the OPPORTUNITY TO HEAR THE THRU .
ALTHOUGH HE HAD PERSONALLY CONDUCTED THE HEARING on my Motion for New Trial when he filed my brief in the Court of Criminal appeals Mr. Crowley:

[(= NEGLECTED TO EXCLUDE THE DENIAL)] of the MOTION FOR NEW TRIAL AND THE CONCOMITANT BRADY AND PROSECUTORIAL MISCONDUCT IN MY BRIEF APPEAL.

As Ms. Lima and Ms. Cotera was ones of the key prosecution witnesses whose testimony grarly assisted the jury to convict me of Capital murder and sentence me to death, the withholding of this key evidence by the state constituted a violation of my rights under 6th and 14th Amed. of U.S. Const. EMPASIS ADD: Also I receive Ineffectiveness of State Habeas Consul, the actions of Dick Wheelan , Tex, Bar No. 21252600 in failing to investigate the facts pertaining to the actions trial counsel., also he failed futher investigate the violation of my rights by the prosecution inforcing Idalia lima to testify in a manner different of what she actually saw and knew.

I have submited this Claim in the U.S. District Court but the process prohibit it because the law required it that this claim be exausted first in the states Courts but my formers lawyers never did it and create a extreme situation to raise ths claim in the U.S. District Court. (see The Motion for New Trial December 18 2000 attaching Exhibit K)"

I asked by help to my Attorney for to litigate this claim with new evidence pertaining to the matter of "the lack of intention to kill the victim in my case" BUT MY ATTORNEY SAY THAT, WE ARE FORECLOSED FROM MAKING ANY FURTHER CLAIM REGARDING THAT ISSUE ABSSENT A CLAIM OF ACTUAL INNOCENCE, WHICH THE FACTS IN MY CASE REALLY DO NOT SUPPORT.

ON REPLY I TOLD HIM THAT WHAT HE SAY IT'S TRUE [BUT] [ALSO] IS TRUE THAT EVEN WHEN THE LAWYERS FAILED TO LITIGATE THIS CLAIM IN THE STATE COURT OR, STATE HABEAS APPEAL.

I STILL HAVE THE OPPORTUNITY TO INCORPORATE THIS NEW EVIDENCE ALL THIS PROCESS APPEALS IN THE 5TH CIRC.DONE AND I HAVE TO APPEAL TO U.S.SUPREME COURT TO STOP A POSSIBLE EXECUTION DATE, IN BASE TO NEW CIENTIFIC EVIDENCE AND NEW STATEMENT OF [3] WITNESSES.

There is a fact's that my ATTORNEY can use like a REFERENCE to RE-OPENEN this CLAIM: The record SHOW"S that I WAS CONVICTED WITH EVIDENCE OF

BALISTIC OR/proves of valistic character [They found,bullet and the bullet shell also the State to present firearms expert]

My Trial Attorney[failed]to secure an INDEPENDENT FIREARMS EXPERT who could have conducted testing.,shoosing to simple rely on a fruitless CROSS-EXAMINATION of th State's Expert

There is no duty in every case to consult expert.However,IN CASE WHERE THE DEFENSE CANNOT EFFECTIVELY CROSS-EXAMINE THE STATE'S EXPERT AND THE EVIDENCE IS CRUCIAL TO THE OUTCOME OF THE CASE,IT IS A IRRESPONSIBLE OR/INEFFECTIVE

NOT TO CONSULT AN EXPERT.Miller v.Anderson.255 F.3d 455.7th Cir.2001)

wallace v.starwart.184 F3d 1112.1117 (9th Cir.1999)

MY ATTORNEY IT'S NOT AGREE/TO HELP ME,TO LITIGATE THIS CLAIM.

I have decided to take a Step to the events; EMPHASIS ADD:

I NEED FINANCIAL HELP OR, THE LEGAL ASSISTANCE OF FORENSIC EXPERT.,OR/ FIREARMS EXPERT.,to re-examine the video of the Crime escene ONLY with that HELP I will obtain the following "SCIENTIFIC FACT"to demonstrate the thru.

(1)-With the ~~trajectory~~ of the bullet,I will demostrate the position exac[tly] that the weapon was discharged,the which support my testimony.

(2)-The exact place were was found the bullet shell,it will confirm the exact position in that the weapon was discharged because all the weapon the have the "bullet shell proyector"to the "right side".The which support my testimony

(3)- The identification of the exact point where the bullet impacted the victim will to coincide with my testimony.

(4)-The gun powder in the hand of the victim will show that he had too,the hands on the weapon.,the which support my testimony

(5) With the (3) affidavit of the witnesses version that they were coerced to lie[It's a prosecutorial misconduct] .,based in the new scientific evidence,with all probability I will be able to discredits the allegations of State witness (Michellg Jonhson)

FURTHER ACTON :

Specifically I need YOUR HELP in Order to make public my case: The MEDIA, to exert influence over decisions of the Court. Also, the FILM or/DOCUMENTARY are the ONLY VIA of JUSTICE, that a HUMAN BEING sentenced to DEATH HAS. through them the [I]njustices in the U.S. Judicial system are [brought] to LIGHT BEFORE THE EYES OF THE WORLD.

My case is UNIQUE in Texas Death Row due to the Fact ~~that~~, I am a victim of serious CONSTITUTIONAL and JUDICIAL ERROR. Those errors represent an INTERNATIONAL INCIDENT in that the DISTRICT ATTORNEY'S OF TEXAS STATE TO KEEP THESE FACTS HIDDEN.

My main concern is to either pressure the Court in making the right decision or/obtainig legal or/Financial assistance TO HIRE A BALLISTIC EXPERT in order to stop a possible execution date base in the "NEW SCIENTIFIC EVIDENCE"
IF I DON'T RECEIVE HELP REALLY SOON MY EXECUTION WILL BE INEVITABLE

Please let me know when you get this Legal Letter, I will be send another through the conventional mail. I appreciate for you help.

take care and God bless you.

/s/

Sincerely
Bernardo Aban Tercero
Id. ID No. 999369
Texas Death Row, U.S.