

CAUSE NO. 8701

STATE OF TEXAS § IN THE DISTRICT COURT
vs. §
RODNEY REED § 21ST JUDICIAL DISTRICT
§
§ OF BASTROP, TEXAS

Motion To Declare Execution Date Void

To the Honorable 21st District Court Judge:

Rodney Reed respectfully moves the Court to declare the July 24, 2019 Execution Order signed by Senior Harris County District Court Judge Doug Shaver void because Senior Judge Shaver had no judicial authority over the case at the time the order was signed. A copy of the Execution Order is attached as Exhibit 1. Because Senior Judge Shaver's 2014 assignment as a 21st District Court Judge lapsed prior to the signing of the Execution Order, this Court has full authority over the matter and the order must be declared void and withdrawn.

A. Senior Judge Shaver's May 28, 2014 Assignment as 21st District Judge and Direction to Hear a Matter Arising in Mr. Reed's Case.

After the State sought to schedule an execution date in this case in 2014, the previously assigned District Court Judge Reva Towslee-Corbett properly recused herself because her father had presided over Mr. Reed's 1998 capital murder trial. After the recusal of one elected Bastrop County District Court Judge, the matter was not transferred to the elected 21st District Court Judge despite no apparent conflicts. Instead,

the Presiding Judge of the Second Judicial Region issued an order on May 28, 2014 (the "Assignment Order"), granting Senior Judge Shaver authority to act as the 21st Judicial District Judge for a defined term. The Assignment Order is attached as Exhibit 2. The Assignment Order states in relevant part:

Pursuant to Section 74.065, Texas Government Code, I hereby assign the Honorable Doug Shaver, Senior Judge, 262nd Judicial District Court, to the 21st District Court, Bastrop County.

This assignment begins the 28th day of May and is for the primary purpose of hearing cases and disposing of any accumulated business requested by the court.

This assignment shall continue as may be necessary for the assigned judge to dispose of any accumulated business and to complete trial of any case or cases begun during this assignment, and to pass on motions for new trial and all other matters growing out of accumulated business or cases heard before the Judge herein assigned, or until terminated by the Presiding Judge.

Exhibit 2.

An administrative assistant to Presiding Judge of the Second Judicial Region sent a letter to Senior Judge Shaver that accompanied the Assignment Order directing him to hear Mr. Reed's case and informing that his work on the Reed case was only anticipated to span a single day. That letter is attached as Exhibit 3.

B. Senior Judge Shaver's Assignment Lapsed Prior to His Entry of the Execution Order.

Article 5, section 7 of the Texas Constitution anticipates that most District Court Proceedings are to heard by an elected judge who resides in the district and is accountable to the voters every four years. There are narrow exceptions to this general constitutional rule, including the authority of the Presiding Judge of an Administrative

Region to assign qualified judges to “special or regular terms of court.” Tex. Gov’t Code § 74.056 of the Government Code. However, the statutory provisions of Section 74.056 limit the authority of an assigned judge, and “the terms of the assignment order control the extent of the visiting judge’s authority and when it terminates.” *In re Amos*, 397 S.W.3d 309, 314 (Tex. App.-Dallas 2013, orig. proceeding). “Generally, visiting judges are assigned either for a period of time or for a particular case.” *In re Republic Parking Sys. of Tex., Inc.*, 60 S.W.3d 877, 879 (Tex. App.-Houston [14th Dist.] 2001, orig. proceeding) (citing *In re Canales*, 52 S.W.3d 698, 701 (Tex.2001)); *In re B.F.B.*, 241 S.W.3d 643, 645 (Tex. App.—Texarkana 2007, orig. proceeding). Although an assignment limited to a specific case may extend for as long as that case remains pending, a general assignment to a district court bench “does not continue indefinitely.” *In re Republic Parking Sys. of Tex., Inc.*, 60 S.W.3d at 879. That a visiting judge cannot be generally assigned to a district court in perpetuity is echoed in Rule 8 of the Rules of Judicial Administration which allow only assignments which span “special or regular terms of court.” Tex. R. Jud. Admin. 8.

The Assignment Order does not assign Senior Judge Shaver to a particular case and does not mention Cause number 8701 or Mr. Reed. *See* Exhibit 2. Rather the Assignment Order grants Senior Judge Shaver all of the authority of the 21st District Court Judge beginning on May 28, 2014. *See* Exhibit 2. Unlike most general assignment orders which specify a defined term, the Assignment Order did not specify an end date. Instead, the Assignment Order purports to grant Senior Judge Shaver the authority to act

as 21st District Court Judge indefinitely unless the Presiding Judge of the Administrative Region terminates the Assignment. *See* Exhibit 2.

The scope of the Shaver Assignment Order must be interpreted consistent with the statute and the Texas Constitution. The Texas Constitution limits the terms of Texas District Court Judges to four years. *See* Tex. Const. Art. 5§7. And section 74.056 of the Code of Criminal Procedure limits the authority of the Presiding Judge of the Administrative Region to assign judges to “special or regular terms.” Tex. Gov’t Code § 74.056. Accordingly, the Presiding Judge of the Administrative Region’s assignment of a visiting judge by cannot continue in perpetuity. Where, as in the Assignment Order, a visiting judge is given general authority to hear all matters before a district court, there must be an end date. If no end date is specified, section 74.056 of the Government Code and the Texas Constitution limit the assignment to the term of court in which the assignment is made. *See* Tex. Gov’t Code § 74.056 (a) (granting authority to assign judges to “special or regular terms of court.”).

Although the assignment of a visiting judge pursuant to Section 74.056 of the Texas Government Code may not exceed the term of court (or at most the judicial term of the elected District Court Judge set forth in the Texas Constitution), the terms of an assignment order can extend an assignment to new matters beyond what was originally contemplated that the visiting judge would hear—so long as those matters arise during an initial proper assignment. For example, term of the Assignment Order began on May 28, 2014, and Judge Shaver was directed to hear the State’s request to schedule Mr. Reed’s execution. While the State’s motion was pending, Mr. Reed filed a motion for DNA

testing pursuant to Article 64 of the Code of Criminal Procedure. Because Mr. Reed's Article 64 motion arose during Judge Shaver's initial assignment, his consideration of the Chapter 64 motion extended his assignment for so long as that matter remained pending. And while a chain of proceedings may have extended Senior Judge Shaver's assignment for a period, there is no question that both the term of court and the term of the elected District Court Judge at the time of the May 28, 2014 assignment expired long before the July 2019 execution order was entered. Moreover, the mandate issued on all pending proceedings after the Texas Court of Criminal Appeals denied and dismissed Mr. Reed's habeas applications through its Order dated June 26, 2019. Accordingly, Judge Shaver's assignment lapsed prior to his entry of the execution order in July 2019 and that order is void. *Ex parte Eastland*, 811 S.W.2d 571, 572 (Tex. 1991) (order is signed by a judge without authority to do is void); *See also In re Hancock*, 212 S.W.3d 922, 928 (Tex. App. 2007) (order entered without authority is "void" not merely "voidable"). Even where the law provides a district court continuing jurisdiction over a matter, akin to this Court's authority to schedule and executions in Mr. Reed's case, that continuing jurisdiction does not extend the assignment of a visiting judge. *See Ex parte Holland*, 807 S.W.2d 827, 830 (Tex. App.—Dallas 1991, orig. proceeding). Accordingly, because Senior Judge Shaver did not have the requisite authority to sign Mr. Reed's execution order, it is void and must be set aside by this Court.

Conclusion and Prayer

When Senior Judge Shaver was assigned to act as the 21st District Court Judge beginning May 28, 2014, he was not made judge for life. The law limited that

assignment to a special or regular term of court, which expired long before the July 2019 entry of the Execution Order. And this Court's continuing jurisdiction over Mr. Reed's criminal case did not extend Senior Judge Shaver's assignment because that jurisdiction belongs to the Court and not a specific judge. *See Ex parte Holland*, 807 S.W.2d at 830. Accordingly, Mr. Reed respectfully requests that this Court declare the July 24, 2019 execution order void, and take steps to ensure that all further matters in this case be heard by either the elected 21st District Court Judge or a properly assigned judge as the Texas Constitution anticipates.

Respectfully submitted,

Dated: November 4, 2019

Respectfully submitted,

/s/ Bryce Benjet
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the District Clerk using the Texas Online eFiling for courts system and served all counsel of record by electronic service or United States Postal Service, this 4th day of November, 2019 on the following:

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/s/ Bryce Benjet
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