

EXPARTE:	§	COUNTY COURT AT LAW
	§	
	§	NUMBER ____
	§	
BRANDON BURLESON	§	HAYS COUNTY, TEXAS

**FIRST SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Brandon Burleson, Applicant in the above-styled and numbered cause and makes this first supplemental petition for Writ of Habeas Corpus based on the following:

**Validity of the Commitment Request/Order Signed by Judge Johnson**

1. A judge is disqualified by statute from presiding over any case where he or she has been counsel for the State." Tex. Code Crim. Proc. Ann. Art. 30.01. Similarly, a judge is disqualified under the Texas Constitution if he or she has "been counsel in the case." Tex. Const. Art. V, § 11. This ensures "that criminal justice [is] administered free from bias or the appearance of bias." *See Whitehead v. State*, 273 S.W.3d 285, 288 (Tex. Crim. App. 2008).

2. In February 2021, a status hearing was held in the underlying criminal case before the Honorable Judge Chris Johnson in which issues like those contained in this Writ of Habeas Corpus were raised. At the conclusion of the hearing, a Commitment Request (sometimes referred to herein as the "Commitment Order") was signed by Judge Johnson of County Court at Law #2 for Hays County ordering Mr. Burleson to serve 10 days in jail to begin at 7 pm on March 24, 2021. *See* Exhibit 13 to the State's Response. However, as it turns out, Judge Johnson participated as a prosecutor in the underlying proceeding against Mr. Burleson (15-0977CR). Judge Johnson's participation was disclosed to the undersigned counsel for Mr. Burleson by the State on March 30, 2021. Mr. Burleson then filed a motion to disqualify Judge Johnson and when the issue was

brought to his attention he correctly noted: “[i]f I was involved in this case as a prosecutor, I’m disqualified and should not have sentenced Mr. Burleson.” *See* Exhibit A. And then after seeing the information from the State noted: “[i]t looks to me like I’m disqualified. If I had known this sooner, I would not have sentenced Mr. Burleson.” *Id.* On information and belief, Judge Johnson agrees he is disqualified from taking any action in this proceeding or in the underlying criminal proceeding. *Id.*

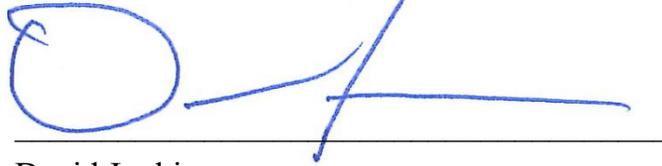
3. In both criminal and civil cases, a judge's disqualification arising from a constitutional or statutory provision "affects jurisdiction" and renders the proceeding a nullity. *See e.g., In re K.E.M., 89 S.W.3d 814, 818-19 (Tex. App.—Corpus Christi 2002, no pet.), citing, Davis v. State, 956 S.W.2d 555, 558 (Tex.Crim.App.1997); Lopez v. State, 57 S.W.3d 625, 627-28 (Tex. App.--Corpus Christi 2001, pet. ref'd); Buckholts Indep. Sch. Dist. v. Glaser, 632 S.W.2d 146, 148 (Tex.1982) (citations omitted) ("The constitutional prohibition has long been held to make any order involving judicial discretion by a constitutionally disqualified judge 'absolutely void,' 'a nullity.'").* It follows that a criminal sentencing is void if the judge was constitutionally or statutorily disqualified. *Ex parte Vivier, 699 S.W.2d 862, 863-64 (Tex.Crim.App.1985) (per curiam); Lopez, 57 S.W.3d at 628.* This is the case even if the parties consent -- there can be no waiver of constitutional or statutory disqualification provisions. *Ex parte Vivier, 699 S.W.2d at 863; Lee v. State, 555 S.W.2d 121, 124 (Tex. Crim. App. 1977).*

4. In light of the foregoing, the commitment order signed by Judge Johnson – the order currently restraining Mr. Burleson’s liberty -- is “absolutely void” and/or a “nullity” and Mr. Burleson is entitled to a Writ of Habeas Corpus. If the State intends to proceed, the “status” hearing which resulted in the Commitment Order should be reset and Mr. Burleson should be able to assert any and all claims, rights, defenses, etc. that he could have presented at the February 22, 2021 status setting in this proceeding or in that proceeding. Mr. Burleson has a fundamental constitutional right to such a hearing “free from . . . the appearance of bias.”

WHEREFORE, Mr. Burleson respectfully requests that the Court find the February 22, 2021 "Commitment Request" to be a nullity and issue the writ of habeas corpus and that Mr. Burleson be afforded all such other and further relief to which he may be entitled.

Respectfully submitted,

McGlothlin Junkin & Wilde, PC  
133 W. San Antonio, Suite 400  
San Marcos, TX 78666  
512/392-7510  
512/392-7520 (fax)  
david@mcglothlinlaw.com



David Junkin  
State Bar No. 11058020

Attorney for Applicant, Brandon Burleson

STATE OF TEXAS       §  
COUNTY OF HAYS     §

My name is Brandon BK Burleson, my date of birth is July 5, 1989, and my address is 1211 Mountain View Drive, San Marcos, Texas 78666 United States of America. I declare under penalty of perjury that every statement of fact in the foregoing First Supplemental Application for Writ Of Habeas Corpus is true and correct.

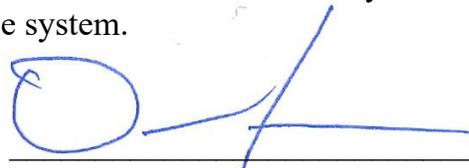
Executed in Hays County, State of Texas on the 7<sup>th</sup> day of April, 2021.



Brandon BK Burleson, Declarant

### CERTIFICATE OF SERVICE

This is to certify that on April 7, 2021, a true and correct copy of the above and foregoing document was served on the Hays County Criminal District Attorney's Office (Anthony Mendoza), by E-service through the Texas E-file system.



David Junkin