

333 S.W.3d 148
Court of Criminal Appeals of Texas.

Ex Parte Claus Detref THILES, Applicant.

No. AP-76,437. March 9, 2011.

Synopsis

Background: Post-conviction application for writ of habeas corpus was forwarded from Dallas County, Pat McDowell, J. After a live evidentiary hearing, the trial court adopted State's proposed findings of fact and conclusions of law and recommended granting relief.

Holding: The Court of Criminal Appeals, Price, J., held that applicant, who was legitimately released on appeal bond during pendency of review by court of criminal appeals of judgment of court of appeals reversing his conviction, but who was unaware that his conviction was affirmed on remand to court of appeals, was entitled to day-for-day time credit against his sentence, for time he was erroneously allowed to remain at large.

Relief granted.

Keller, P.J., filed a concurring opinion.

West Headnotes (2)

1 Sentencing and Punishment  Erroneous release

A convicted inmate who, through no fault of his or her own, is erroneously released from custody by the State is entitled to time credit toward the expiration or discharge of a sentence, because it would be unreasonable, and would defy human nature, to expect one who has been erroneously released from custody to insist to the authorities that he should be re-incarcerated.

2 Sentencing and Punishment  Erroneous release

Defendant, who was legitimately released on appeal bond during pendency of review by court of criminal appeals of judgment of court of appeals reversing his conviction, was entitled, after court of criminal appeals reversed the judgment of the court of appeals and remanded, and court of appeals thereafter affirmed the conviction, to day-for-day time credit against his 16-year sentence, for the 22-year period between the time that mandate of court of appeals was issued with respect to affirmance of conviction, to the time that defendant was finally arrested on warrant issued on mandate, where defendant was allowed to remain at large erroneously and through no fault of his own, and he did not know his sentence had been affirmed.

2 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

OPINION

PRICE, J., delivered the opinion of the court in which MEYERS, WOMACK, JOHNSON, KEASLER, HERVEY and COCHRAN, JJ., joined.

This is a post-conviction application for writ of habeas corpus brought pursuant to Article 11.07.¹ We filed and set this application in order to address the applicant's claim that he is entitled to credit against his prison sentence for a lengthy period of time during which he was allowed to remain at large on an appellate bond even though, unbeknownst to him, the appellate mandate affirming his conviction had long since issued. Should he receive the credit he now seeks, the applicant will have discharged his sentence and would be entitled to immediate release. We will grant relief.

FACTS AND PROCEDURAL POSTURE

The following procedural history is based on stipulations made at the writ of habeas corpus hearing. The applicant, Claus Detref Thiles, was indicted on July 7, 1981, and convicted on April 19, 1982, in Dallas County for aggravated sexual assault. He was sentenced to sixteen years in prison. He entered the Texas prison system on April 22, 1982, and filed his notice of appeal on July 12, 1982. The applicant appealed to the Fifth Court of Appeals in Dallas, and on November 19, 1984, that court reversed the conviction for a defective plea admonishment. The State then filed a petition for discretionary review, and on January 11, 1985, the applicant had an appeal bail set by this Court.² On January 25, 1985, the applicant was bench warranted back to the Dallas County Jail. Southwest Bonding Company filed his appeal bond, and the applicant was released from jail on that bond. The terms of the appeal bond did not include conditions requiring the applicant to report to the bondsman, or to make an appearance in the trial court without first being called to appear.

On February 19, 1986, this Court reversed the judgment of the court of appeals and remanded the cause to that court to consider the applicant's remaining grounds of error not previously determined on original submission. On July 14, 1987, the court of appeals issued its final opinion in the applicant's case, affirming the conviction. The court of appeals's mandate arrived at the trial court on October 20, 1987; however, *no warrant issued on this mandate until November 16, 2007*. No one from the Dallas County District Attorney's Office, officials of the Dallas County Criminal District Court Number 5, the Dallas County Sheriff's Office, or the Southwest Bonding Company took any action to have the applicant's bond forfeited from the time of his release on this appeal bond, January 25, 1985, until 2009. Nor was he ever called to appear before the trial court from the time of the issuance of the appellate mandate, October 20, 1987, *150 until 2007, when the warrant on the mandate finally issued.

The applicant was initially stopped and arrested by police near his home in Missouri on May 21, 2009, for DWI, although that charge was later dismissed. Once the police determined that the applicant had an outstanding 2007 warrant from Dallas County, he was transferred from Missouri to Texas and is now serving his sentence in the Texas Department of Criminal Justice (TDCJ). From the time the applicant was released on the appeal bond, January 25, 1985, until the date of his arrest May 21, 2009, he accrued no additional criminal convictions. He remained a productive member of society during that time, lived openly under his own name, and made no effort to conceal his whereabouts.

The applicant has now filed this post-conviction application for writ of habeas corpus seeking relief. In his writ application he alleges, *inter alia*, that he was "constructively released" from custody, erroneously and through no fault of his own, and is therefore entitled to his street time from the time that the mandate of affirmance was issued in his case in October 1987. The State agrees that applicant is entitled to relief on this claim. After holding a live evidentiary hearing, the trial court adopted the State's proposed findings of fact and conclusions of law and recommended that this Court grant the applicant relief. The trial court concluded that the applicant was, in effect, erroneously released and is entitled to day-for-day credit on the remainder of his sentence, which would then be immediately discharged. For the reasons explained below, we agree with the applicant, the

State, and the trial court that the applicant is entitled to relief and should be given day-for-day credit for the rest of his sentence. Because this credit fully discharges his sentence, we will order his immediate release.

ANALYSIS

1 The applicant relies by analogy to a long line of cases in which convicted inmates were inadvertently released from custody when they should have remained serving their legitimately imposed sentences.³ In such cases of erroneous release, we have consistently held that “an individual is entitled to time credit toward the expiration or discharge of a sentence when the individual, through no fault of his or her own, was erroneously released from custody by the State.”⁴ It would be unreasonable, we have observed, and would defy human nature to expect one who has been erroneously released from custody to insist to the authorities that he should be re-incarcerated.⁵

The instant case is not, strictly speaking, a case of erroneous release. Here, the *151 applicant was legitimately released on an appeal bond after his conviction had been reversed by the court of appeals. But the applicant should have been re-incarcerated once his conviction was final in 1987. Unfortunately, a warrant for his arrest after the appellate mandate issued was not signed until 2007, twenty years later. Both the applicant and his wife testified at the writ hearing that, during those twenty years, the applicant was never notified that his sentence had been affirmed and that the appellate mandate had issued. In the meantime, the applicant remarried, moved from state to state, started up a new business venture and became a productive member of the various communities in which he lived. He argues that, through no fault of his own, he was allowed to remain at large for twenty years when he could have been in custody serving time on his sentence, which he would have discharged long ago.

There is another line of Texas cases that generally governs whether time credit should be allowed for inmates who are inadvertently permitted to remain at large for a period of time following an appellate mandate of affirmance. In these cases, we have held that when the defendant was out on bond pending appeal of a judgment of conviction and the conviction was affirmed, but later it was noticed that the applicant was never taken into custody, the applicant was *not* entitled to be relieved from serving the sentence and should *not* be given credit against his sentence for the time that he was not in custody.⁶ These cases all seem to hinge, however, on whether the applicant ever became aware that his sentence had been affirmed on appeal and a *capias* issued for his arrest.

In *Ex parte Dunn*, the applicant was out on an appeal bond when his sentence was affirmed, and the clerk of the trial court did not enter a *capias* for his arrest after the affirmance of his sentence until six years later when the trial court discovered the oversight.⁷ Citing to previous cases dealing with terms and conditions set out in bonds, we held that the applicant was not entitled to time credit from the date the mandate issued because he did not comply with the terms of his appeal bond requiring him to appear before the convicting court.⁸ It is unclear from our opinion in *Dunn* whether the applicant knew his sentence had been affirmed. But in each of the cases upon which we relied in *Dunn*, it was clear that the applicants were aware that their sentences had been affirmed on appeal.⁹ Although it is not explicitly stated that *Dunn* knew his sentence had been *152 affirmed, we implied that he did, having taken pains in our opinion to point out that the applicants in the prior cases were all aware that their convictions had been affirmed.

2 The State, the applicant, and the trial court all agree that the principle of reasonableness underlying the erroneous release cases should apply on the facts of this case, and that the applicant should be granted the relief. We agree that this same principle should apply, at least on the particular facts before us. Because of the inaction of the State,¹⁰ the applicant was never informed that a mandate of affirmance had issued in his case. He never violated the conditions of his appellate bond, having never been called to appear before the court upon the affirmance of his conviction on appeal. Instead, he was allowed to remain at large erroneously, without his knowledge and through no fault of his own. Under these particular circumstances, we agree with the parties and the trial court that the applicant is entitled to day-for-day time credit from the time the appellate mandate issued to the time he was finally arrested on the warrant.¹¹

CONCLUSION

Had the applicant been timely returned to custody following the issuance of the *153 appellate mandate of affirmance in 1987, his sentence would have discharged in approximately 2001. We agree that the applicant is entitled to relief in the form of credit for the time he was at large after the mandate issued and conclude that, with this credit toward his sixteen-year sentence, he has served it in full and shall be immediately discharged from the custody of TDCJ. A copy of this opinion shall be sent to TDCJ.

It is so ordered.

KELLER, P.J., filed a concurring opinion.

KELLER, P.J., concurring.

As the Court says, there are two lines of cases that address time credit for out-of-custody defendants. An erroneously-released defendant is generally entitled to credit for time out of custody. But a defendant who is out on bond pending appeal is not entitled to credit for time out of custody after the conviction is affirmed. Applicant's situation is of the second type, but the Court grants relief under a so-called "principle of reasonableness" underlying the first type of case.

I would grant relief, but I would do so without reference to a nebulous "principle of reasonableness." The difference between applicant's case and other appeal-bond cases is that applicant won in the court of appeals. In all of our past cases in which a defendant was out on bond pending appeal and his conviction was later affirmed, the defendant had not won at any level in the judicial system.¹ In each of those four cases, the defendant stood convicted at the time he was released, and his release was just a temporary reprieve unless he could convince a higher court of the merits of his claims. We have held that, under those circumstances, the defendant had a duty to surrender himself to the authorities when mandate issued.² Although *154 in three of the four cases the defendant was aware that mandate had issued, the court errs to suggest that the holdings in those cases hinged on such awareness.³

In this case, applicant prevailed at the court of appeals. At the time he was released from custody, he had already succeeded in his attempt to procure relief and he no longer stood convicted. I would hold that, in these circumstances, he was relieved from the duty to enquire further into the outcome of the appellate proceedings.

I concur in the Court's judgment.

Footnotes

1 TEX.CODE CRIM. PROC. art. 11.07.

2 "If the defendant requests bail after a petition for discretionary review has been filed, the Court of Criminal Appeals shall determine the amount of bail." TEX.CODE CRIM. PROC. art. 44.04(h).

3 The most recent cases in this line include: *Ex parte Hale*, 117 S.W.3d 866, 873 (Tex.Crim.App.2003) (burglary sentence of habeas applicant who was twice erroneously released to mandatory supervision ordered discharged when his period of supervision on erroneously granted mandatory supervision expired); *Ex parte Rowe*, 277 S.W.3d 18, 19–20 (Tex.Crim.App.2009) (habeas applicant sentenced to a term of imprisonment in Texas was sent to Georgia to answer charges there, then placed on probation in Georgia and never incarcerated pursuant to his Texas sentence, was entitled to credit against his Texas sentence for time spent erroneously released); *Ex parte Baker*, 297 S.W.3d 256, 259 (Tex.Crim.App.2009) (habeas applicant entitled to credit for time when he was erroneously released after completing a sentence in Harris County when he should have remained in confinement to complete another sentence imposed by Gillespie County).

4 *Ex parte Baker*, *supra*, at 258; *see also Ex parte Hale*, *supra*, 869–72.

5 *Ex parte Rowe*, *supra*, at 20; *Ex parte Baker*, *supra*, at 259.

6 *Ex parte Dunn*, 976 S.W.2d 208 (Tex.Crim.App.1998); *Ex parte Francis*, 510 S.W.2d 345 (Tex.Crim.App.1974); *Ex parte Rayburn*, 146 Tex.Crim. 204, 172 S.W.2d 505 (1943); *Ex parte Underwood*, 94 Tex.Crim. 157, 248 S.W. 551 (1923).

7 976 S.W.2d at 209–10.

- 8 The bond required the applicant to appear before the convicting court “from day to day and from term to term of the same and not
depart without leave of the Court in order to abide the judgment of the Court of Criminal Appeals of the State of Texas.” *Id.* at 210–11.
- 9 *Ex parte Francis, supra*, at 346–47 (applicant failed to take make appearance in trial court in accordance with his appellate bond
when he learned that his conviction had been affirmed); *Ex parte Rayburn, supra*, at 205–206, 172 S.W.2d 505 (after learning of
the affirmance of his conviction, applicant presented himself for admittance to the penitentiary instead of to trial court, as per the
conditions of his appellate bond); *Ex parte Underwood, supra*, at 158–59, 248 S.W. 551 (applicant knew his conviction was affirmed
on appeal because he paid the fine at that time, but because he made no appearance before trial court in accordance with the appellate
bond, he was not entitled to credit for time spent at large when he was not immediately taken into custody to serve jail sentence).
- 10 TDCJ made numerous attempts to determine the applicant's location after the mandate had issued, but most of those queries went
unanswered. The judge of the trial court received letters of inquiry from TDCJ as to the applicant's status and whereabouts in
September, October, and December of 1991, but there is no record of any response to those letters from the trial court. TDCJ also
sent a letter of inquiry to the Dallas County District Attorney's Office in January of 1992, but there is also no record of any response
to this letter. TDCJ sent further letters of inquiry to the judge of the trial court in May and July of 1992. The court coordinator
responded to the July letter that there was an outstanding warrant for the applicant, but in reality, no record of any warrant for
the applicant existed at that time. Additionally, at no point between 1985 and 1992 did the trial court or any other entity inform
Southwest Bonding Company that the applicant's conviction had been affirmed and that a mandate had issued in the case. After yet
another inquiry from TDCJ, a warrant finally issued for the applicant in November 2007 and remained in effect until the applicant's
eventual arrest for DWI in 2009.
- 11 Presiding Judge Keller would also grant the applicant relief, but on a different theory. She would hold that, because the applicant's
conviction was reversed by the court of appeals, he no longer stood convicted and should therefore be “relieved from the duty
to enquire further into the outcome of the appellate proceedings.” Concurring opinion, at 154. But we do not read the case law
necessarily to impose any such duty to enquire—under *any* circumstances. The appellate-bond cases seem simply to hold that when
an appellant *does* discover, by whatever means, that his conviction has ultimately been affirmed on appeal, he has a duty to present
himself to the convicting court, in accordance with his bond, for appropriate disposition in keeping with the ultimate appellate
mandate. *This* duty is not contingent on whether an intermediate appellate court affirmed or reversed his conviction. When an
intermediate appellate court in Texas reverses a criminal conviction, that reversal is subject to being overturned by this Court on a
State's petition for discretionary review. That the intermediate court reversed the conviction does not mean that an appellant who is
subsequently released by this Court on an appellate bond under Article 44.04(h), will never have to present himself to the convicting
court—quite the contrary, he most certainly *will* if this Court reinstates his conviction on discretionary review. In the instant case,
had the applicant ever received actual notice in any form that the trial court's judgment of conviction was ultimately reinstated by
this Court, we do not think (nor do we understand Judge Keller to advocate) that it would have been appropriate to relieve him of
the obligations of the appellate bond we set for him just because he was not officially notified of that ultimate disposition. This
applicant never received any form of notice.
- 1 *See Dunn*, 976 S.W.2d 208, 210 (Tex.Crim.App.1998) (defendant appealed conviction, court of appeals affirmed, petitions for
discretionary review were refused); *Ex parte Francis*, 510 S.W.2d 345, 345 (Tex.Crim.App.1974) (defendant appealed conviction,
Court of Criminal Appeals affirmed); *Ex parte Rayburn*, 146 Tex.Crim. 204, 204, 172 S.W.2d 505, 505 (1943) (same); *Ex parte*
Underwood, 94 Tex.Crim. 157, 157–58, 248 S.W. 551, 551 (1923) (same).
- 2 *See Dunn*, 976 S.W.2d at 211 (“Applicant was still bound by the terms of the appeal bond, which, like those in *Francis*, required his
appearance ‘before said Court from day to day and from term to term of same, and not depart therefrom without leave of said Court,
in order to abide the judgment of the Court of Appeals of the State of Texas.’ Based on this language, like that in *Francis*, applicant
had a duty to appear whenever the mandate was received and his presence was thus required.... Thus, once the mandate issued and
applicant did not appear in the trial court, he violated the terms of his appeal bond.”); *Francis*, 510 S.W.2d at 346 (quoting *Ex parte*
Salisbury, 98 Tex.Crim. 341, 342–43, 265 S.W. 696, 697 (Tex.Crim.App.1924): “A duty likewise rested upon the appellant, and
the sureties on his recognizance. He might have paid the fine or surrendered himself, so might the sureties. None of the officers of
the state had the right to affirmatively release the appellant or waive the state's right to the satisfaction of the judgment of the court.
They having no right to do so by affirmative action, it is our opinion that their negligence in performing the duties which the law
imposed upon them would not operate to discharge the appellant from the necessity of suffering the penalty imposed upon him by
the judgment of conviction.”); *Rayburn*, 146 Tex.Crim. at 205, 172 S.W.2d at 506 (“When appellant entered into the appeal bond,
he bound himself to appear before the District Court of Palo Pinto County, to abide the judgment of this court in his case. He had
not, prior to his arrest, complied with that condition.... If appellant has been injured by reason of the delay in serving the sentence
the law imposed upon him, such arises by reason of his own acts and conduct in failing to do that which he bound himself to do in
order to be at liberty during the appeal of his case.”); *Underwood*, 94 Tex.Crim. at 159, 248 S.W. at 551 (“The appeal bond which

the appellant executed required that he appear before the court in which the judgment was rendered and abide by the judgment of the Court of Criminal Appeals in this case.”).

- 3 See previous footnote. The Court also errs to suggest that the cases hinge on whether the defendant “ever became aware that ... a capias issued for his arrest.” Court’s op. at 6. In each of the prior cases, the defendant was either out of custody for a long period of time before capias issued, *Dunn*, 976 S.W.2d at 209–10 (capias did not issue for six years after mandate had issued), or it did not matter to this Court whether capias had issued in a timely fashion (or at all). *Francis*, 510 S.W.2d at 345 (“We are unable to determine from the record ... whether the clerk of the convicting court forwarded such mandate to the sheriff of Lubbock County or not, nor do we deem it necessary to so determine. Regardless of which official was derelict in his duty, the fact remains that the appellant was not arrested on the mandate of this Court, nor was he carried to the Department of Corrections as the law requires.”); *Rayburn*, 146 Tex.Crim. at 204, 172 S.W.2d at 505 (“There is, however, no direct evidence that the original mandate was received and filed in the District Court of Palo Pinto County, nor that a commitment was issued thereon.”). See also *Underwood*, *passim* (no reference to whether a capias issued).

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