

Cause _____

In re Jonathan MORGAN § **IN THE CRIMINAL DISTRICT**
 § **COURT No. 21,**
 § **BASTROP COUNTY, TEXAS**

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

Applicant, defendant in cause number 15095 in Criminal District Court No. 21, respectfully moves the court for leave to file a writ of habeas corpus and to grant that writ.

Applicant further respectfully moves the Court for expedited hearing and expedited consideration of this writ. In support, Applicant would show:

BACKGROUND

1. Applicant Morgan is currently being unlawfully held in the Bastrop County Jail by Terry Pickering, Sheriff of Bastrop County, Texas. On information and belief, Applicant is incarcerated pursuant to an order entered in Criminal District Court No. 21, Bastrop County, by Judge Campbell on March 26, 2013. *See Ex. A, Orders dated March 27, 2013.*
2. Morgan is charged with felony offenses, cause numbers 15093, 15094, and 15095.
3. Morgan was first arrested on September 25, 2012. *Ex. B, Affidavit of Jonathan Morgan.*
4. Morgan's grandmother, Pasty King, posted his bond on September 26, 2013 and he was released from jail. *Id.*
5. On October 6, 2012, Morgan was arrested and held at the Bastrop County jail. *Id.*
6. Morgan was held at the Bastrop County jail without bond. *See Ex. C, Magistration Form dated Oct. 6, 2012.*
7. Morgan requested court-appointed counsel and submitted an affidavit of indigency on November 16, 2012. *Ex. D, Magistration Form dated Nov. 16, 2012; Ex. E, Affidavits of Indigency dated Nov. 16, 2012.*

8. Morgan had no income at the time of the request and had been incarcerated since Oct. 6, 2012. *See* Ex. E, Ex. B.
9. While still incarcerated, Morgan was appointed attorney Bruce Fox. Ex. B.
10. On February 13, 2013, Morgan's grandmother posted his bond and Morgan was released from jail. *Id.*
11. The total bond was \$215,000. *See* Ex. F, Entry dated Feb. 27, 2013.
12. On February 27, 2013, Morgan appeared at his arraignment hearing in front of Judge Campbell, with his court-appointed attorney, Fox. Ex. B.
13. At that arraignment hearing, District Attorney Greg Gilliland argued that if Morgan could afford to post bond, he could afford to hire an attorney. Ex. B.
14. Judge Campbell removed Fox from Morgan's cases. *See* Ex. F, Ex. B.
15. Morgan's case was reset for March 27, 2013 and Judge Campbell advised Morgan to hire an attorney. Ex. G, Reset/Scheduling Order dated Feb. 27, 2013; *see also* Ex. B.
16. On March 27, 2013, Morgan appeared in court. Judge Campbell asked Morgan if he had hired an attorney and Morgan told Judge Campbell that he could not afford to hire an attorney. Judge Campbell asked Morgan if he had a job and Morgan told him that he did not have a job. Judge Campbell told Morgan he would go to jail until he could hire an attorney. Ex. B.
17. Judge Campbell entered an order revoking Morgan's bond and Morgan was re-arrested. Ex. A.
18. Morgan's grandmother, Patsy King, filed a letter with the court on March 27, 2013, in which she explained that she had posted Jonathan's bond and that Jonathan had no income. Ex. H.
19. Morgan has been incarcerated without bond since March 27, 2013. Ex. B.
20. Morgan has no job or other source of income. *Id.*

ARGUMENT

21. The power of the court to set bail may not be used as an "instrument of oppression." TEX. CODE CRIM. PROC. art. 17.15.

22. A court may not raise a defendant's bond for failure to obtain private counsel. *Meador v. State*, 780 S.W.2d 836, 837 (Tex. App. — Houston 1989, no pet. hist.) (attached as Exh. I).
23. The facts of *Meador* are directly on point and compel this Court to order Morgan released from custody.
24. In *Meador*, the court set bond for the defendant, and, after appointed counsel withdrew, the court ordered the defendant to hire counsel. 780 S.W.2d at 836. At the reset, after Meador appeared a few minutes late, the “trial court revoked [Meador’s] bond and again held him without bond.” *Id.*
25. The *Meador* court held that failure to hire an attorney is not “good and sufficient cause” to revoke a defendant’s bond. It then reinstated the defendant’s original bond.
26. Morgan’s failure to hire an attorney is similarly not good and sufficient cause to revoke his bond, and this Court, pursuant to *Meador*, must reinstate his original bond and order Morgan released from jail on his original bond.
27. Further, Texas law specifies that an “indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement . . .” TEX. CODE CRIM. PROC. art. 1.051. The charges against Morgan may result in punishment by confinement.
28. To insure that all qualified individuals receive appointed counsel, Texas requires that counties “adopt and publish written county procedures for timely and fairly appointing counsel for an indigent defendant.” TEX. CODE CRIM. P. 26.04(a). The Bastrop County District Courts, accordingly, have issued Local Rules to Implement the Fair Defense Act, which are binding on all the judges of the criminal district courts. TEX. CODE CRIM. PROC. 26.04(b).
29. Morgan’s requests for counsel were not processed according to Texas law or Bastrop County’s Local Rules.
30. The procedures in a County’s indigent defense plan or local rules must “apply to *each* appointment of counsel made by a judge or the judges’ designee in the county.” *Id.* at art. 26.04(b)(2) (emphasis added).
31. The Texas Code of Criminal Procedure sets out what factors may be considered when making an indigency determination: “. . . the defendant’s income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant.” TEX. CODE CRIM. PROC. 26.04(m) (2005).

32. The Local Rules similarly spell out the standard and method for determining indigence. For the purpose of appointing counsel, the Local Rules state that a defendant is indigent if his net household income is less than 125% of the federal poverty guidelines and he does not own non-exempt assets that total more than \$2,500. Local Rules to Implement the Fair Defense Act 3.02(a).
33. As the Court of Criminal Appeals wrote in *Tuck v. State*, “the determination of indigency is made on a case-by-case basis.” 214 S.W.3d 411, 414-415 (Tex. Crim. App. 2007) (attached as Exh. J).
34. *Tuck* demonstrates the importance of an individualized inquiry by explaining that a defendant’s expenses, as well as his income and assets, play a role in determining indigency. *Tuck*, 215 S.W.3d at 416. Moreover, the court in *Tuck* explained that “a trial court must accept the defendant’s evidence [of indigency] as true,” “unless there is a reasonable, articulable basis in the record to discount it.” *Id.* at 415 (internal citation and punctuation omitted). In *Tuck*, the court found that even if the defendant were able to decrease his expenses, there was still no evidence that the defendant would be able to pay the costs of representation. *Id.* at 417.
35. To assure protection of a right as fundamental as the right to counsel, courts indulge every reasonable presumption against waiver of counsel. *Trevino v. State*, 555 S.W.2d 750, 751 (Tex. Crim. App. 1977) (panel op.) (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). In a criminal case, the record must show that the defendant was informed specifically of his right to the assistance of appointed or retained counsel and that he clearly rejected such assistance. *Carnley v. Cochran*, 369 U.S. 513, 516 (1962).
36. The defendant must be informed specifically of his right to have counsel appointed at the state’s expense. *Piankhy v. Cuyler*, 703 F.2d 728, 731 (3d Cir. 1983).
37. Article 26.04(m) of the Texas Code of Criminal Procedure prohibits courts from considering “whether the defendant has posted or is capable of posting bail,” when making indigency determinations, “except to the extent that it reflects *the defendant’s* financial circumstances” (emphasis added) (listing the defendant’s income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant as the evidence that may be considered by a court when evaluating whether a defendant is indigent).
38. The Bastrop County Local Rules also explicitly prohibit the consideration of bail in the determining of indigency. The Rules state, “A defendant's posting of bail or ability to post bail may not be considered in determining whether the defendant is indigent. Even when a defendant has posted bail, the defendant's financial

circumstances are measured by the financial standards stated in this rule.” Local Rules 3.03(a).

39. As the U. S. Supreme Court has recognized, “the fact that a defendant may be able to muster enough resources, of his own or of a friend or relative, to obtain bail does not in itself establish his nonindigence.” *Hardy v. United States*, 375 U.S. 277, 289 n. 7 (1964); TEX. CODE CRIM. PROC. art. 26.04(m).
40. The Texas Court of Criminal Appeals similarly prohibits consideration of a parent’s income in determining eligibility for appointed counsel: “Parents of appellant are not legally bound to pay for the expenses of an appeal . . . [e]ven though they put up a cash bail for appellant’s appearance . . .” *Ex parte Combs*, 545 S.W.2d 171, 174 (Tex. Crim. App. 1977) (internal citation and punctuation omitted).
41. Spousal income available to the defendant is the only third-party income that may be considered by the Court when determining whether a defendant is indigent. TEX. CODE CRIM. PROC. art. 26.04(m). Morgan is not married.
42. Morgan’s bail was revoked as a result of his inability to hire an attorney and his request for a court-appointed attorney. Morgan has the right to have his request for counsel evaluated according to Texas law and the Local Rules. Morgan’s incarceration, which is the result of his inability to hire counsel, is illegal.

RELIEF REQUESTED

WHEREFORE, applicant Morgan respectfully requests that the Court grant this application for writ of habeas corpus and upon conclusion thereof reinstate Morgan’s original bond. Applicant further requests that the Court appoint him an attorney because he is indigent and cannot afford to hire an attorney.

April 4, 2013

By _____/s/_____

Attorney for Applicant:

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AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared Susanne Pringle, who after being duly sworn stated:

“I have read the foregoing application for writ of habeas corpus and swear that the allegations of fact contained therein are true and correct, according to my belief.”

SUBSCRIBED AND SWORN TO BEFORE ME on the April 4, 2013.

Notary Public in and for

_____ County, Texas

Cause _____

In re Jonathan MORGAN § **IN THE CRIMINAL DISTRICT**
 § **COURT No. 21**
 § **BASTROP COUNTY, TEXAS**

ORDER ISSUING WRIT OF HABEAS CORPUS

This ____ day of _____, 2013, came to be heard the Petition for Writ of Habeas Corpus by Applicant, JONATHAN MORGAN, and the Court having considered the same finds that the Writ should be issued.

It is therefore, ORDERED, ADJUDGED AND DECREED that a Writ be issued directing that Applicant JONATHAN MORGAN have his bond reinstated and that, Sheriff of Bastrop County, Texas, release Applicant pursuant to that bond.

JUDGE PRESIDING