

canned Feb 02, 2007

No. \_\_\_\_\_

IN THE COURT OF CRIMINAL APPEALS.

OF TEXAS

IN AUSTIN, TEXAS

No. 7794

IN THE 130TH DISTRICT COURT

OF WHARTON COUNTY, TEXAS

JERRY HARTFIELD

§

PETITIONER

v.

§

THE STATE OF TEXAS; HON. MARK

§

FILED

at 9:15 o'clock A.M.

NOV 27 2006

§

DENICE KUCERA MALOTA  
DISTRICT CLERK, WHARTON CO. TEXAS  
By 6 Deputy

§

MOND PROCUNIER, DIRECTOR OF RESPONDENT  
THE TX. DEPT OF CORRECTION

§

MANDATORY JUDICIAL <sup>NOTICE</sup> OF CONDITION OF LAW PRE-  
CEDENT PURSUANT TO F.R.E. 201(d); AND SUPPLEMENTAL  
WRIT

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THE PETITIONER Jerry Hartfield, TDC # 353178, REQUEST this Court

to take Mandatory Judicial Notice of the conditions and Law precedent pursuant to F.R.E. 201(d). In support thereof, will show the Court the following claims he has just RECEIVED BEEN made award of, After this Court REVERED the conviction and remanded the cause of the trial court for a NEW trial based upon this Court's conclusion that the trial court had EXCLUDED a VENIREPERSON ON THE STATE'S CHALLENGE FOR CAUSE UNDER SECTION 12.31(b), V.A.P.C., IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION. Hartfield v. State, 645 S.W.2d 436 (TEX. CRIM. APP. 1980) In support of the factual assertions in this Judicial Notice regarding the petitioner's direct appeal to this Court, the petitioner refers the Court to the records presented on file in this Court relating to that appeal.

The State then filed a motion for Rehearing on October 2, 1980. On January 26, 1983, this Court delivered an en banc opinion which denied Rehearing. Hartfield v. State, Supra At 441-442.

The State then filed a Motion for Leave to file a Second Motion for Rehearing on February 10, 1983. This Court denied Leave to file a Second Rehearing motion on March 1, 1983, and this Court's mandate was issued by the Clerk of this Court on March 4, 1983. The District Clerk

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IN Wharton County, Texas, filed the MANDATE RECEIVED from this Court on March 9, 1983. SEE a CERTIFIED copy of the MANDATE RECEIVED and filed by the trial Court Clerk that is on file there that states in RELEVANT parts to wit:

"That the Judgment be REVERSED and the cause REMANDED for further proceedings in accordance with the opinion of this Court, and that this decision be CERTIFIED below for OBSERVANCE."

"The Motion for LEAVE to file State's Second motion for RE-hearing DENIED."

"Wherefore, we command you to observe the order of our said Court of Criminal Appeals, in this behalf and in all things to have it duly RECOGNIZED, OBEYED and EXECUTED."

HOWEVER, in contrast, this Court order was NEVER OBSERVED, in that behalf and in all things to have it duly RECOGNIZED, OBEYED and EXECUTED, because the PETITIONER NEVER WENT back to be RETRIED from that order. He was just (only) taken to the walls in Huntsville TX, told there that his SENTENCE had been commuted from death to LIFE SENTENCE, as being recommended by the Board of Pardon & Paroles on March 14, 1983, that was granted by the Governor of Texas, Mark White at that time on March 15, 1983, thereafter the

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- fact the petitioner was taken to Coffield Unit, to do the rest of his time on the life sentence, where the Governor signed a proclamation
- Number 83-04805

### Agreement And Authority

A court must dismiss an indictment with prejudice when it determines that a defendant's Sixth Amendment right to a speedy trial has been violated. SEE E.G., Barker v. Wingo, 407 U.S. 514, 521-22 (1972); SEE Strunk v. U.S. 412 U.S. 434, 439-40 (1973) (Barker requires dismissal for violation of Sixth Amendment speedy trial; district courts may not fashion less extreme remedies such as reduction of sentence. Cf Mark White, Supra.)

When a mistrial or an order for a new trial is granted, the second trial must begin within SEVENTY days of the date that "the action occasioning the retrial becomes final. SEE E.G., 18 U.S.C § 3161(e) The retrial court may extend the period for retrial up to 180 days if the 70-day limit is impracticable due to the "unavailability of witnesses or other factors resulting from the passage of time. Id; SEE U.S. v Holley, 986 f.2d 100, 103 (5th cir 1993) (noting that Act gives court greater flexibility in setting cases for trial following appeal than following indictment; no violation when retrial scheduled 180 days after remand due

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Six circuits have clearly held that the 70-day period begins when the appellate court issue its mandate. SEE U.S. v. Rivers, 844 f.2d 916, 919 (2d Cir 1988); U.S. v. Felton, 811 f.2d 190, 198 (3d Cir 1987 (en banc)); U.S. v. Kington, 875 f.2d 1091, 1109 (5th Cir 1989); U.S. v Crooks, 826 f.2d 415 (9th Cir 1987); U.S. v. Mobile Materials Inc., 871 f.2d 902, 911-12 (10th Cir 1989) (per curiam); U.S. v Robertson, 810 f.2d 254, 258-59 (D.C. Cir 1987). The First Circuit has conflicting decision on the proper date for commencing the 70-day period. Compare U.S. v. Rush, 738 f.2d 497, 509 (1st Cir 1984) (issuance of mandate by appellate court triggers 70-day period) with U.S. v Ferris, 751 f.2d 436, 438-39 (1st Cir 1984) (receipt of mandate by trial court triggers 70-day period). The Eleventh Circuit has held that the action becomes final on the date the district court RECEIVE the appellate court's mandate. SEE U.S. v. Lasteed, 832 f.2d 1240, 1241 (11th Cir 1987).

## CONCLUSION

For the above reasons given, the petitioner request this Court to take mandatory judicial notice pursuant to F.R.E. 201(d), because this Court may take "judicial notice" of facts which are "not subject

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To REASONABLE dispute because they are either "(1) generally known within the territorial Jurisdiction of the trial court or... (2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Rule 201(b), Fed. R. Evid.

WHEREFORE, PREMISES CONSIDERED, the petitioner

pray that this Court order his RELEASE, which is now known to be

the TEXAS DEPARTMENT OF CRIMINAL JUSTICE. ID,

Whereas, ~~be~~ dismissing the indictment in cause No. 7794, that  
is to be with PREJUDICE. I so pray.

DATED: 10.27.06

Respectfully Submitted,

Jerry Hartfield

Eric Hartfield TDC# 353178

Michael Unit 3-C-64-B

P. O. Box 4500

TENNESSEE Colony, TX 75886

cc