

Cause _____

In re Hiram MCCOY

§ **IN THE COUNTY CRIMINAL**
§ **COURT AT LAW 4,**
§ **HARRIS COUNTY, TEXAS**

**APPLICATION FOR WRIT OF HABEAS CORPUS, REQUEST FOR
LEAVE TO FILE WRIT, AND REQUEST FOR EXPEDITED
CONSIDERATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Applicant, defendant in cause numbers 1455965 and 1455966 in Harris County Court at Law 4, 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. Applicant's attorney for this habeas writ is from Austin and is available for a telephone hearing at any time, and will personally appear in court if necessary. In support, Applicant would show:

BACKGROUND

1. Applicant McCoy is currently being unlawfully held in the Harris County Jail by Tommy Thomas, Sheriff of Harris County, Texas. On information and belief, Applicant is incarcerated pursuant to an oral order made in County Criminal Court 4, Harris County, by Judge James F. Anderson on September 28, 2007. McCoy has no copy of this order.
2. McCoy is charged with misdemeanor offenses, cause numbers 1455965 and 1455966.
3. McCoy was arrested in May 2007. McCoy appeared in court on or about May 28, 2007, while incarcerated in the Harris County jail, and was provided with counsel by the court.
4. After release from the Harris County jail, the attorney's appointment was revoked, although no hearing was held on whether McCoy's financial circumstances had changed. On Information and Belief, the appointment was revoked because McCoy was released on bond.
5. McCoy appeared in County Criminal Court 4 on June 14, 2007. Judge Anderson called McCoy to the bench. The court informed McCoy that he had three choices:

“The first choice is we can push back your court date and you can talk to attorneys and find one to hire on your own. Your second choice is you can choose to represent yourself and talk to the prosecutor. Finally, your last choice is if you’re indigent, and you can’t work for a valid reason and you have no property, you can request a court-appointed attorney.” Affidavit of Adrián de la Rosa, Exh. A. McCoy attempted to ask the judge for an extension in order to secure enough time to hire an attorney, but the court told him two weeks was plenty of time to find an attorney to hire. The court told McCoy he needed to sell all of his property in order to pay a down payment on a court-appointed attorney. This information deterred McCoy from requesting a court-appointed attorney and he reluctantly accepted the time offered by the judge in order to hire an attorney.

6. At no time was McCoy permitted to fill out a written financial statement documenting his financial status for a determination of whether he should be appointed counsel. At the time of his June 14, 2007 hearing, McCoy was unemployed, had no income, no vehicle, owned no real estate, did not have a bank account, and was without other significant assets. His financial situation has not materially changed since that time.
7. McCoy returned to Harris County Criminal Court at Law 4 on or about June 28, 2007. McCoy could not afford to hire counsel, and requested court-appointed counsel. That request was denied, and McCoy was reset and told to hire counsel. McCoy’s request to a clerk of the court for paperwork to request a court-appointed lawyer and demonstrate his indigence was denied, and the clerk informed McCoy that the court did not use such a form.
8. Subsequent to the June 28 appearance, McCoy was able to retain counsel for a short time period, but he could not make payments. McCoy’s attorney withdrew for lack of payments.
9. Unable to retain counsel, McCoy returned to court without an attorney. At an August 2007 court appearance, Judge Anderson ordered McCoy rearrested because he did not hire counsel. McCoy subsequently was bonded out by his mother.
10. Subsequent to his release, McCoy returned to County Court 4 on a weekly basis, informing the court that he was unable to hire counsel and requesting court-appointed counsel. The court did not appoint counsel for McCoy.
11. On September 28, 2007, McCoy appeared in court a few minutes late. When he was called before the court, he reiterated his request for appointed counsel. McCoy informed the court he did not have enough money to hire an attorney. The court responded that “you are supposed to have an attorney today,” and ordered McCoy rearrested.

12. Judge Anderson has a pattern and practice of threatening to jail defendants for failure to hire an attorney. Exh. B (affidavits of, Andre Sharp, Laurie Canazos, Corey DeLeon, Donna Maher, Elizabeth Quiroga and Shandra Houston).

ARGUMENT

13. The power of the court to set bail may not be used to oppress or punish. TEX. CODE CRIM. PROC. art. 17.15.
14. 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 C).
15. The facts of *Meador* are directly on point and compel this Court to order McCoy released from custody.
16. 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.*
17. The *Meador* court first noted that a defendant "shall not be required to give another bond in the course of the same criminal action," and that bond should not be forfeit if a defendant appears in court, even if he is a few minutes late. *Id.* at 837.
18. The *Meador* court then 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.
19. McCoy'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 McCoy released from jail on his original bond.
20. 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 McCoy may result in punishment by confinement.
21. 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 Harris County Indigent Defense Plan (Plan) was adopted by the Criminal County Courts at Law. This Plan is binding on all the judges of the county courts at law. TEX. CODE CRIM. P. 26.04(b).

