

KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

July 14, 1994

Shirley A. Southerland #555516
Hobby Unit
Rt. 2 Box 600
Marlin, Texas 76661-9772

Shirley Annette Martin Southerland

RE: Cause No. 526673-A
180th District Court

Dear Sir:

Enclosed herewith please find a copy of the instrument indicated by the "x" mark at the side. Pursuant to Article 11.07 of the Code of Criminal Procedures, we are sending you this copy for your information concerning the Post-Conviction Writ which you filed in said cause.

xx State's Original Answer Filed July 14, 1994
_____ Affidavit of Attorney _____
_____ Court Order Dated _____
_____ Proposed Findings of Facts _____
_____ Other _____

Very truly yours,

Raymond Posado
RAYMOND POSADO, Manager
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP: lm

Enclosure Respondent's Original Answer

PC/CR-5 R01-01-91

EX PARTE § IN THE 180TH DISTRICT COURT
SHIRLEY A.M. SOUTHERLAND, § OF
Applicant § HARRIS COUNTY, T E X A S

RESPONDENT'S ORIGINAL ANSWER

Respondent, the State of Texas, through its Assistant District Attorney for Harris County, files this original answer in the above-captioned cause, having been served with an application for writ of habeas corpus pursuant to TEX. CODE CRIM. PROC. ANN. art. 11.07 § 2 (Vernon Supp. 1994), and would show the following:

I.

Applicant is confined pursuant to the judgment and sentence of the 180th District Court of Harris County, Texas, in cause number 526673 ("the primary case"), where Applicant was convicted by a jury for the felony offense of murder. The jury assessed punishment at confinement for life in the Texas Department of Criminal Justice, Institutional Division.

The Fourteenth Court of Appeals affirmed the primary case on February 28, 1991, in *Southerland v. State*, No. C14-90-00246-CR.

II.

Respondent denies the factual allegations made in the instant application, except those supported by official court records and offers the following additional reply:

Handwritten signature in black ink, possibly "27-997" with a stylized flourish.

REPLY TO APPLICANT'S VARIOUS GROUNDS FOR RELIEF

Applicant complains of assorted dastardly doings by the prosecution in the primary case. Specifically, she complains that the prosecution "suppressed" (App. at 3) two items of evidence: a written statement by a woman named Judy Frazier, and the results of a blood test on the clothes of an "eye-witness."¹ She cites both the Brady² doctrine and Holmes v. Third Court of Appeals, No. 71, 764 (Tex. Crim. App. April 20, 1994) (not yet published) in support of her claimed entitlement to relief.

This application is hampered by a conceptual difficulty, however, insofar as both Brady and the Holmes "no evidence" test presume that the material Applicant wants was either undisclosed and/or unavailable to the defense at the time of trial. As the Applicant points out, though, the prosecution filed a motion in limine to preclude the defense from making reference to either of these matters before the jury without first obtaining permission from the court.³ Obviously, the prosecution would have felt no need to file a motion in limine unless defense counsel actually knew of the information and the prosecution feared that he would try to get

¹ Perplexingly, however, a reading of the statement of facts shows that there were no eyewitnesses to the murder. Rather, the State's case was based on circumstantial evidence and on admissions made by Applicant to third-parties after the crime was committed.

² See Brady v. Maryland, 373 U.S. 83 (1963).

³ Respondent cannot locate anything in the record to reflect the disposition of the motion in limine (Tr. 35-36). Nor does it appear, in any case, that the defense actually tried to get either of these matters before the jury at trial.

it before the jury to the prejudice of State's case. Therefore Brady is inapplicable. And, seeing as the matters were the subject of a motion at the time of trial, the evidence is not "new" for Holmes purposes.

To the extent Applicant has any cognizable complaint whatsoever, it has to do with either; 1) the application of Texas open records laws to the disputed material, which is the subject of collateral civil proceedings that negate any need for the Court of Criminal Appeals to speak on the subject; or 2) the possible ineffectiveness (App. at 8.) of counsel in failing to press the court to allow him to use the Frazier statement and/or blood test evidence on Applicant's behalf. Only this latter issue deserves factual inquiry, although Respondent is overwhelmingly confident that counsel's actions had valid strategic explanation.

III.

Respondent, therefore, requests that this Court, pursuant to TEX. CODE CRIM. PROC. ANN. art. 11.07 §2(d), find that there are certain controverted, previously unresolved facts material to the legality of Applicant's confinement which require further investigation by the Court. Specifically, Respondent requests that this Court designate for resolution the issue of whether the Hon. Ken Goode rendered Applicant effective assistance of counsel.

Respondent further requests the Court to order Applicant's counsel in the primary case, the Hon. Ken Goode, to file an affidavit summarizing the actions taken to represent Applicant and

responding to the allegations of ineffective assistance of counsel contained in the application, specifically, that he failed to adequately pursue the usage of the Frazier statement and blood test results on Applicant's behalf.


IV.

Service has been accomplished by sending a copy of this instrument to the following address:

Ms. Shirley A. Southerland
555516
Hobby Unit
Rt. 2 Box 600
Marlin, TX 76661-9772

SIGNED this 14th day of July, 1994.

Respectfully submitted,


JOHN S. KLASSEN
Assistant District Attorney
Harris County, Texas
201 Fannin, Suite 200
Houston, Texas 77002
(713) 755-6657
Texas Bar I.D. #11553500

FILED
KATHERINE TYRA
District Clerk

JUL 14 1994

Time: 4:15
Harris County, Texas
By 
Deputy

KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

July 18, 1994

Shirley A. Southerland #555516
Hobby Unit
Rt. 2 Box 600
Marlin, Texas 76661-9772

Shirley Annette Martin Southerland
RE: Cause No. 526673-A

180th District Court

Dear Sir:

Enclosed herewith please find a copy of the instrument indicated by the "X" mark at the side. Pursuant to Article 11.07 of the Code of Criminal Procedures, we are sending you this copy for your information concerning the Post-Conviction Writ which you filed in said cause.

_____ State's Original Answer Filed _____
_____ Affidavit of Attorney _____
xx _____ Court Order Dated July 15, 1994
_____ Proposed Findings of Facts _____
_____ Other _____

Very truly yours,

Raymond Posado
RAYMOND POSADO, Manager
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP: lm

Enclosure Order Requesting A Designation of Issues and Order for Filing of Affidavit by Hon. Ken Goode

PC/CR-5 R01-01-91

V 1278 P 0917

EX PARTE	§	IN THE 180TH DISTRICT COURT
	§	OF
SHIRLEY A.M. SOUTHERLAND, Applicant	§	HARRIS COUNTY, T E X A S

ORDER DESIGNATING ISSUES AND ORDER FOR FILING AFFIDAVIT

Having considered the application for writ of habeas corpus in the above-captioned cause and the Respondent's answer, the Court finds that the issue of whether applicant was afforded effective assistance of counsel needs to be resolved.

Therefore, pursuant to Article 11.07, §2(d), this Court will resolve the above-cited issue and then enter findings of fact.

To assist the Court in resolving this factual issues, Ken Goode is ORDERED to file an affidavit summarizing the actions taken to represent the applicant in cause number 526673 and responding to the allegations of ineffective assistance of counsel contained in the application for writ of habeas corpus and specifically responding to the allegations that counsel:

- a. failed to utilize a statement by Judy Frazier and/or blood test results of a witness' clothes to Applicant's benefit at trial.

Counsel is directed to prepared his affidavit in accordance with the guidelines set out in *Ex parte Morse*, 591 S.W.2d 904 (Tex. Crim. App. 1980).

27-996 ✓ 13-999 ✓
 27-995 ✓ 13-998 ✓
 27-994 ✓

V1278 P0913

Ken Goode IS ORDERED to file said affidavit with the Appellate Division of the District Clerk's Office within **TWENTY (20) DAYS** of the signing of this order.

The Clerk of the Court is ORDERED to send a copy of this order to the applicant, a copy of this order to the Respondent, and to serve copies of this order, the application and Respondent's answer to:

The Hon. Ken Goode
GOODE & GOODE
6420 Richmond Ave. Suite 490
Houston, Texas 77057

When the affidavit of Ken Goode is received, the Clerk is ORDERED to send a copy of said affidavit to the applicant and a copy to the Respondent.

The Respondent and the applicant shall file any proposed findings of fact within twenty days after the affidavit of Ken Goode is filed. Upon the expiration of time to file the proposed findings of fact, the Clerk shall submit all the documents material to this cause to this Court.

The Clerk of the Court is ORDERED to transmit a copy of this order designating issues and ordering an affidavit to the Court of Criminal Appeals. The Clerk of the Court is ORDERED NOT to transmit at this time any other documents in the above-styled case to the Court of Criminal Appeals until further ordered by this Court.

V1278 P0914

JUL 15 1994

Signed this 15 day of June, 1994.



JUDGE PRESIDING

V1278 P0915

KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

P. O. Box 4651
HOUSTON, TEXAS 77210

July 18, 1994

The Hon. Ken Goode
Goode & Goode
6420 Richmond Ave. Suite 490
Houston, Texas 77057

Re: Shirley Annette Martin Southerland
Cause No. 526673-A
180th District Court

Dear Sir:

Enclosed herewith please find a copy of the Court's Order wherein the court orders that Hon. Ken Goode, Attorney at Law file an affidavit in response to allegations made in the petition for post-conviction writ of habeas corpus in the above numbered and styled cause.

Very truly yours,

Raymond Posado
RAYMOND POSADO, Manager *lm*
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP: lm

Enclosure Order for Hon. Ken Goode to File An Affidavit

PC/CR-7

V 1278 P 0916

KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

July 27, 1994

Shirley A. Southerland #555516
Hobby Unit
Rt. 2 Box 600
Marlin, Texas 76661-9772

Shirley Annette Martin Southerland

RE: Cause No. 526673-A

180th District Court

Dear Sir:

Enclosed herewith please find a copy of the instrument indicated by the "x" mark at the side. Pursuant to Article 11.07 of the Code of Criminal Procedures, we are sending you this copy for your information concerning the Post-Conviction Writ which you filed in said cause.

_____ State's Original Answer Filed _____
xx _____ Affidavit of Attorney July 27, 1994 _____
_____ Court Order Dated _____
_____ Proposed Findings of Facts _____
_____ Other _____

Very truly yours,

Raymond Posado
RAYMOND POSADO, Manager
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP: lmm

Enclosure Affidavit of Ken Goode

PC/CR-5 R01-01-91

NO. 526673-A

EX PARTE

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

SHIRLEY A.M. SOUTHERLAND,
Applicant

180TH JUDICIAL DISTRICT

AFFIDAVIT

STATE OF TEXAS

COUNTY OF HARRIS

)
)
)

BEFORE ME, the undersigned authority, on this day personally appeared KEN GOODE, who, upon oath, deposed and said as follows:

"My name is KEN GOODE. My business address is 6420 Richmond, Suite 490, Houston, Texas 77057. I have been an attorney licensed in Texas since May of 1982.

This affidavit is given pursuant to an order of the 180th District Court entered June 15, 1994. It is my understanding that I am to summarize my work in the referenced case in general and specifically respond to the allegation that I failed to utilize a statement by Judy Frazier and/or blood test results of her clohness to my client's benefit at trial.

21-993

I.

After I was appointed to defend the applicant, I took various steps to represent her. I began by reviewing the complete file of the State, including grand jury testimony of witnesses. For example, Mr. Rob Carter testified in front of the grand jury that the applicant had admitted the murder of the complainant to him and had indicated a desire to flee to Tennessee. The State was unable to produce Mr. Carter at trial.

I went to the scene where the complainant's body was found and took photographs. I interviewed applicant's husband and son for hours in my office. I had telephone conversations with the applicant's friends and relatives. I interviewed the applicant many times in the Harris County Jail. I filed all appropriate motions on her behalf.

On more than one occasion I attempted to interview members of the Cavazos family, who did testify at trial. They would only refer me to their attorney, Victor Rosa.

II.

As regards the "witness" Judy Frazier, I noticed immediately upon reading the offense report that on the surface, it appeared that Judy Frazier had exculpatory information.

I filed a subpoena for Judy Frazier to appear in court on June 6, 1989. A copy is attached. On June 5, 1989, the process server of the 180th District Court attempted personal service but was told that Judy Frazier had changed residence. Earlier, a copy of the subpoena had been mailed to Judy Frazier on May 30, 1989. This also is reflected on the attachment.

To my surprise, Judy Frazier complied with the subpoena and appeared in court with a friend on June 6, 1989. Apparently she had gotten word of the subpoena when she checked on her mail at her old address.

At any rate, I interviewed her and she was very cooperative. We talked for approximately 1½ hours on the 3rd floor of the Harris County Courthouse. Attached are copies of my handwritten notes from my interview with her, as well as my claim for out-of-court work which indicates I interviewed her for 1½ hours on June 6, 1989.

Ms. Frazier knew nothing about the complainant or the murder. The blood on her clothing was the result of a bar fight and was not connected to applicant's charges. Ms. Frazier stated

that a detective had questioned her since she had been seen with bloody clothing near the spot where the complainant's body was dumped. She admitted to me that she lied to police initially about having seen a murder. It turned out that the detective showed her photographs of the complainant's body, etc. which provided details for her lies about the crime scene.

In short, based on what was for me an extensive and lengthy interview, and taking into account other information I had from my client and my reading of the offense report and grand jury testimony, I decided against using Ms. Frazier at trial or requesting testing of the clothing myself.

To be sure I was speaking with the "real" Judy Frazier, I requested and was allowed to look at an out-of-state picture identification which was numbered "12349131, issued to Judy Frazier, P.O. Box 723, Stephens, AR 71764.

III.

Finally, as regards the allegation that the State, through Steve Baldassano, was guilty of misconduct, I am very sad to see such lies. Mr. Baldassano was not originally on this case. His chief prosecutor in the 180th District Court at the time, Pam Derbyshire, dealt with me in the beginning and kept an open file, including grand jury testimony to which I was not entitled to have access. I subpoenaed and interviewed Ms. Frazier before Mr. Baldassano was assigned the case. When he was put in charge of the case, he called me to see if I had noticed the information concerning Judy Frazier in the offense report.

I remember that he was relieved to learn that I had actually met her. It is because I informed him that I would not be using her as a witness that he filed the motion in limine cited by the applicant.

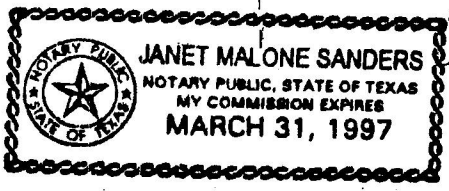
IV.

In conclusion, I just hope that this affidavit clears up some rather obvious misconceptions. I have quite extensive handwritten notes regarding my work on this case. If the court deems it necessary, I will gladly bundle them up for the court's perusal. If more details are needed, I will supplement this affidavit.

Ken Goode
KEN GOODE

SUBSCRIBED AND SWORN TO before me the undersigned this
27th day of July, 1994.

Janet Malone Sanders
Notary Public in and for the
State of Texas.
My commission expires: _____



FILED
KATHERINE TYRA
District Clerk
JUL 27 1994
Time: 12:01
Harris County, Texas
By: D. J. Howard
Deputy

ATTORNEY FEES EXPENSE CLAIM - DISTRICT COURTS
 UNDER ARTICLE 26.05, CODE OF CRIMINAL PROCEDURE AS AMENDED

INSTRUCTIONS

1. SHOW ONLY ONE DEFENDANT AND TYPE OF CASE PER CLAIM.
2. BEFORE PAYMENT CAN BE AUTHORIZED, EACH ITEM MUST BE COMPLETED LEGIBLY IN INK.
3. FOR INVESTIGATIONS, PAID BILLS MUST BE SUBMITTED BY THE ATTORNEY FOR EXPENSES CLAIMED.
4. FORWARD COMPLETED CLAIM TO THE PRESIDING JUDGE FOR APPROVAL.

COURT NUMBER
180th

COURT APPEARANCE INFORMATION

DEFENDANT: Shirley Sutherland
 aka Shirley Stokley

CASE NUMBERS: 526673

	NUMBER OF COURT DAYS	RATE	HOURLY	MINIMUM	MAXIMUM	AMOUNT
IN-COURT APPEARANCE						
IN COURT APPEARANCE	5	\$180	\$50	\$75	\$150	\$750
NON-TRIAL APPEARANCE				50	150	
NON-CAPITAL TRIALS				200	300	
<input type="checkbox"/> IF TRIAL LASTS FIVE OR MORE DAYS					2500	
CAPITAL TRIALS:				400	500	
<input type="checkbox"/> 1ST CHAIR				300	400	
<input type="checkbox"/> 2ND CHAIR						
OUT OF COURT						
OUT OF COURT HOURS (Documented)-Prior Court Approval	10	50	50			500
EXPERT TESTIMONY (Documented)-Plus Expenses					10 Hrs	
INVESTIGATION (Documented)				275	800	
APPEALS						
<input type="checkbox"/> NON-CAPITAL				500	1750	
<input type="checkbox"/> IF TRIAL LASTS MORE THAN FIVE DAYS					2500	
<input type="checkbox"/> CAPITAL					15000	
PETITION FOR DISCRETIONARY REVIEW <input type="checkbox"/> GRANTED <input type="checkbox"/> NOT GRANTED			50		500	
CHANGE OF VENUE (Above Plus Expenses)					200	
FULL-TIME APPOINTED COUNSEL (Except Conflicts)					3923.00/wk	
TOTAL	5					1250

RECORPER'S RETURN GRANDJURY: A check for the fee for the instrument was found to be correct. The instrument was reproduced in accordance with the best authentic copy of the instrument. A photocopy of the instrument was filed and recorded.

DATES IN COURT (Enter Type of Case followed by Dates, EXAMPLE: In Court Appearance - 9/12, 9/13, 9/14/88)
~~5-9-89; 7-11-89; 7-26-89; 8-15-89; 9-13-89~~
 5-9-89; 7-11-89; 7-26-89; 8-15-89; 9-13-89

PERSONAL INFORMATION

SOCIAL SECURITY NUMBER: 393-72-6518
 TELEPHONE NUMBER: 266-0335
 BAR CARD NUMBER: 8143200

MAILING ADDRESS: 6420 Richmond (Number) 490 Houston TX 7703 (City) (State) (Zip Code)

CERTIFICATION

I, Ken Goode Attorney at Law, swear or affirm to the Court and to the County Auditor that they may rely upon the information contained above to make payment according to the fee schedule adopted by the Board of Judges pursuant to Article 26.05 Code of Criminal Procedure effective September 1, 1987. I further swear or affirm that I have not received nor will I receive any other money or anything else of value for representing the accused.

FORN TO AND SUBSCRIBED BEFORE ME ON THIS, THE 16 DAY OF March A.D., 19 90

Ken Goode Attorney at Law (Signature)

C. Smith DISTRICT CLERK DEPUTY (Signature)

[Signature] PRESIDING JUDGE (Signature)

124948 COURT NUMBER

THE STATE OF TEXAS
County of Harris

IN THE 180 DISTRICT COURT
Of Harris County, Texas

VS. Shirley Stokley

To the Sheriff or Any Constable or Any Peace Officer of Harris County—Greetings:

YOU ARE HEREBY COMMANDED TO SUMMON _____

Judy Frazier (Personal Service)
whose vocation is that of _____
and whose location is 11718 Hempstead Highway # C-12
Houston, Tx. 77062
2. _____
whose vocation is that of _____

if to be found in your County, to be and appear before the Honorable 180 District
in and for Harris County, on June 6, 19 89 at 8:45 a. m., to give evidence
behalf of the State and Defendant in a certain cause wherein the State of Texas is Plaintiff,

Shirley Stokley
is Defendant, and there to remain from day to day, and from term to term until discharged by the Court.
Herein Fail Not, and due return make of this writ.

Witness my official signature this 26 day of May A. D. 19 89

RAY HARDY

District Clerk, Harris County, Texas

By C. Stulin, Deputy

STATE Tex code
DEPT. 346-0335

SHERIFF'S RETURN

Came to hand on the 26 day of May, 1989 and executed by summoning _____
within named witness _____ in person, in the County of Harris, at the dates as herein stated, viz:

DATE OF SERVICE	NAME	MILES	DIRECTION	FEE FOR SERVICE	FEE FOR MILEAGE	TOTAL FEE
<u>5-30-89</u>	<u>Allatone - Mail</u>					
<u>6-5-89</u>	<u>Attempted P/S - Mailed about 3 mos. ago -</u>					

TOTAL FEE.....

and not executed as to witness _____
the diligence used in finding said witness _____ being _____

FILED
RAY HARDY
District Clerk

and who after due search and diligent inquiry, cannot be found in Harris County, Texas

JOHNNY KLIVENIAGEY
Sheriff of Harris County, Texas
By Jean [Signature]

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was
found to be inadequate for the best photographic
reproduction because of illegibility, carbon or
photo copy, discolored paper, etc. All blockouts,
etc. will be corrected.

JUNO 5 1989
Time: 4:30 PM
Harris County, Texas
By _____

State of Texas

180th Dist. Ct.
Harris Co., TX.

vs.
Shirley Sutherland
aka Shirley Stolley

Out-of-Court Hours
TO THE HONORABLE JUDGE:

COMES NOW Ken Goode, attorney of record in the referenced cause, and shows that the following out-of-court work has been expended in the defense of this case. It should be noted that many more than the hours listed were spent in preparation of this case; however, since the maximum amount billable is 10 hours, only such 10 hours will be listed.

Date	Description	Person	Hours
1-21-87	scene visit	Cedarview/Skyview	1
5-6-88	conference	Judy Frazier	1 1/2
1-20-89	conference	Ron Sutherland	3
1-1-89 4-6-89 4-18-89 4-20-89 5-7-89 5-22-89	conferences	Shirley Sutherland	4 1/2
			<hr/>
			10

VA180 P0123

Respectfully submitted,
Ken Goodie

Ken Goodie
6420 Richmond #490
Houston, TX. 77057

(713) 266-0335

08143200

Attorney for Defendant

NOV 18 10 07 24

ATTORNEY FEES EXPENSE CLAIM - DISTRICT COURTS

UNDER ARTICLE 26.05, CODE OF CRIMINAL PROCEDURE AS AMENDED

INSTRUCTIONS

1. SHOW ONLY ONE DEFENDANT AND TYPE OF CASE PER CLAIM.
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4. FORWARD COMPLETED CLAIM TO THE PRESIDING JUDGE FOR APPROVAL.

COURT NUMBER

180th

COURT APPEARANCE INFORMATION

DEFENDANT:
Shirley Sutherland
 aka Shirley Stokley

CASE NUMBERS

526673

	NUMBER OF COURT DAYS	RATE	HOURLY	MINIMUM	MAXIMUM	AMOUNT
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IN COURT APPEARANCE	5	\$150	\$ 50	\$ 75	\$ 150	\$ 750
NON-TRIAL APPEARANCE				50	150	
NON-CAPITAL TRIALS				200	300	
<input type="checkbox"/> IF TRIAL LASTS FIVE OR MORE DAYS					2500	
CAPITAL TRIALS: <input type="checkbox"/> 1ST CHAIR				400	500	
<input type="checkbox"/> 2ND CHAIR				300	400	
<u>OUT OF COURT</u>						
OUT OF COURT HOURS (Documented)-Prior Court Approval	10	50	50		10 Hrs	500
PERT TESTIMONY (Documented)-Plus Expenses				275	800	

KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

August 1, 1994

Ms. Shirley A. Southerland #555516
Hobby Unit
Rt. 2 Box 600
Marlin, Texas 76661-9772

Shirley Annette Martin Southerland
RE: Cause No. 526673-A
180th District Court

Dear Sir:

Enclosed herewith please find a copy of the instrument indicated by the "X" mark at the side. Pursuant to Article 11.07 of the Code of Criminal Procedures, we are sending you this copy for your information concerning the Post-Conviction Writ which you filed in said cause.

_____ State's Original Answer Filed _____
_____ Affidavit of Attorney _____
XX _____ Court Order Dated July 29, 1994
_____ Proposed Findings of Facts _____
_____ Other _____

Very truly yours,

Raymond Posado
RAYMOND POSADO, Manager
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP: lm

Enclosure Findings of Fact and Order

PC/CR-5 R01-01-91

301 FANNIN • P. O. Box 4651 • HOUSTON, TEXAS 77210 • (713) 221-5711

V1290 P0414

CERTIFICATE 1
OF THE 2
CLERK 3
AND 4
APPLICANT 5
IN 6
CUSTODY 7
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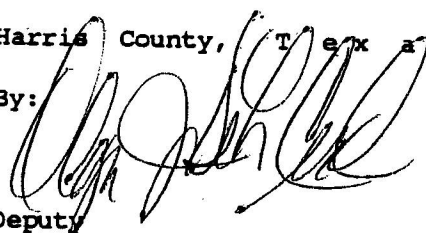
THE STATE OF TEXAS I IN THE 180th DISTRICT COURT
COUNTY OF HARRIS I OF HARRIS COUNTY, TEXAS

I, KATHERINE TYRA, District Clerk of Harris County, Texas, do hereby certify that the foregoing 104 pages contain true and correct copies of original records now in my lawful custody and possession relating to cause number 526673-A including the petition, all answers filed by the State the Order of the Court (entered on the 29th of July, A.D., 1994) and each document, the inclusion of which was thereby ordered.

I further certify that the Applicant Shirley Annette Martin Southerland

is in custody of the Texas Department of Criminal Justice, Institutional Division.

Witness my hand and seal of said Court at Houston, Texas, on this the 30th day of August, A.D., 1994.

KATHERINE TYRA, District Clerk
Harris County, Texas
By: 
Deputy

RECORDER'S MEMORANDUM.
This instrument is of poor quality
and not satisfactory for photographic
recording; and/or alterations were
present at the time of filming.

NO. 526673-A

EX PARTE § IN THE 180TH DISTRICT COURT
SHIRLEY A.M. SOUTHERLAND, § OF
Applicant § HARRIS COUNTY, T E X A S

FINDINGS OF FACT AND ORDER

Having reviewed the documents filed in cause number 526673-A, and the official court records of the challenged conviction, the Court adopts as Findings of Fact the history of the case as set forth in Respondent's Answer.

The Court finds that the facts asserted in the affidavit of Ken Goode filed in this cause are true and that said facts together with the contents of official court records demonstrate that the totality of the representation afforded Applicant was sufficient to protect her right to reasonably effective assistance of counsel.

The Court further finds that Applicant's accusations of prosecutorial misconduct are belied by the trial record in this cause, which establish that Applicant's counsel was aware of both the existence of potentially exculpatory information from Judy Frazier and also of blood tests run on Ms. Frazier's clothing. (Tr. 35-36).

Applicant has failed to demonstrate that her conviction was improperly obtained. Accordingly, it is recommended to the Texas Court of Criminal Appeals that relief be denied.

THE CLERK IS ORDERED to prepare a transcript of all papers

27-992 /
13-997 /

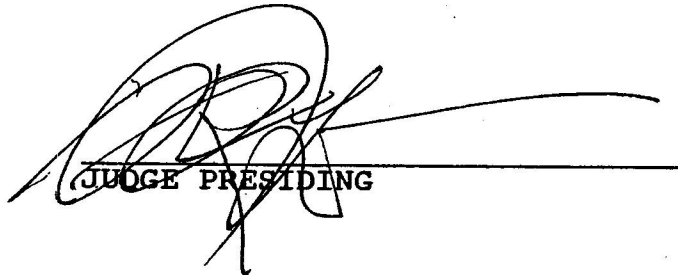
V1290 P0412

in cause number 526673-A and transmit same to the Court of Criminal Appeals as provided by TEX. CODE CRIM. PROC. ANN. art. 11.07 (Vernon Supp. 1994). The transcript shall include certified copies of the following documents:

- A. the application for writ of habeas corpus;
- B. the Respondent's Answer;
- C. the Court's order;
- D. the indictment (or information), judgment and sentence, and the docket sheets in cause number 526673 (unless they have been sent to the Texas Court of Criminal Appeals pursuant to a post conviction writ of habeas corpus order);
- F. the Affidavit of Ken Goode, and all attachments thereto;
- G. the transcript in cause number 526673;
- H. the Respondent's Proposed Findings of Fact; and
- I. the Applicant's Proposed Findings of Fact (if any).

THE CLERK is further ORDERED to send a copy of this order to the Applicant.

Signed on this _____ day of JUL 29 1994, 1994.



JUDGE PRESIDING