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NORTHERN DIST. OF TX
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Cause No. 3 – 10 CV 2210 – N BH

In re: Mark Allen, Family of Coker	§	United States District Court
Relator, Applicant, Petitioner	§	
For Writ of Habeas Corpus	§	Northern District of Texas
	§	
v.	§	
	§	Dallas, Texas
City of Richardson Municipal Court	§	
Judge, and Chief of Police, J.L. Spivey	§	
Responent, Detainer	§	Judge _____

2ND DEC 8 AM 10:43
DEPUTY CLERK *[Signature]*

MOTION TO PROCEED AS NEXT FRIEND FOR MARK COKER

Comes now Next Friend, Brady Byrum, for Relator, Applicant and Petitioner, Mark Coker, (hereinafter also Coker), before this Honorable United States District Court, on this the 2nd day of November, 2010, by and through his attorney in fact, and filer, Brady Byrum, (hereinafter also Byrum).

1. Byrum had been given personal and direct power of attorney to perform the writing and filing of this Petition for the Great Writ of Habeas Corpus, because the Richardson Municipal Jail did not provide Coker with pencils, pens, paper and a Law Library access to any inmate therein for the filing of documents in Court.

2. Byrum can be reached at 2802 Cary Dr. Mesquite, Texas 75150, home phone 972-682-4729, cell phone 682-559-0159. Byrum moves for this Court to accept and grant this Motion to Proceed as Next Friend for Mark Coker because Coker is not available in the Dallas, Texas area because Coker has no residence in this area and must travel across

Texas for work, and because Byrum is the major author of this Petition and its contents and arguments therein.

3. Byrum does not know the physical address of Coker, but believes it is somewhere in the Austin area. Further, Coker came by and visited Byrum at Byrum's home and signed a written Power of Attorney for this Court to accept to comply with *Whitmore v Arkansas*, 495 U.S. 149.

JURISDICTION

4. This Court has jurisdiction, because there are issues of Substantive, Due Process and Cruel and Unusual Punishment involved in this case, both of which are Federally Protected Rights.

FACTS OF THE CASE

5. Coker was arrested by the City of Plano on a Capias issued by the City of Richardson. That action was an illegal action because capiases have been outlawed by *Crane v Texas*, 759 F.2d 412, because the Municipal Judges do not grant a STEP TWO, due process hearing, to first determine whether or not there was justification in either not showing back up in Court, or in not paying the Class C fine.

6. The Richardson Municipal Court Judge held Coker for TEN CONTINUAL DAYS on Class C charges. That action was and is an illegal action, because the Texas Code of Criminal Procedure 17.151 ONLY ALLOWS a maximum of FIVE days before bringing an incarcerated Defendant to trial on Class C Charges.

7. The Richardson Municipal Court Judge then found Coker guilty of the Class C charges and gave Coker TIME SERVED, which is yet another illegal act, because Municipal courts CANNOT lawfully grant time served for Class C charges because the Texas Court of Criminal Appeals has outlawed said action in Thomas v State, (App. 6 Dist. 1988) 751 S.W. 2d 601, (pet. disc. rev. refused). It states, "Sentence to time served is unauthorized."

8. Said conviction was an illegal conviction, because the Richardson Municipal Court had NO JURISDICTION to proceed against Coker, as the Judge violated the law in holding him for ten days for trial.

9. On the sixth day of incarceration of Coker, the City of Richardson LOST ALL JURISDICTION, due to their violating Tx.C.Crim.Proc. 17.151. Each day of unlawful incarceration is a separate offense of **Abuse of Office** and **Abuse of Official Capacity**, both of which areailable Penal Code Crimes.

10. Had the Municipal Court brought Coker to trial by the 5th day as required by law, there would not have been enough **time in jail** to apply towards the guilty verdict that the Court was already pre-determined to arrive at, and the Court would have been left with either releasing Coker after trial with the total fines still unpaid **OR** they would have had to place Coker back in jail to serve out the remaining 5 days time, which is yet another illegal act in violation of the Texas Penal Code 12.23 and **Trezevant v Tampa**, 741 F.2d 336, and **Pulliam v Allen**, 466 U.S. 522 (1984).

11. Coker was then released, but the torts and crimes committed against Coker can and likely will continue, and the City of Richardson must be made to stop their illegal and unlawful actions by this Court, and therefore this Petition must proceed so that Coker can bring his redress to Court and get **DECLARTORY RELIEF** and **INJUNCTIVE RELIEF**, so that Richardson will be corrected in their policies of illegal practices.

SUMMARY

12. Applicant Byrum therefore moves this Honorable Court for the issuance and execution of the Writ of Habeas Corpus to investigate and determine under what law or laws, conditions, or circumstances that Coker was originally arrested by Plano on a **CAPIAS**, and then held in the Richardson Municipal Jail for **TEN DAYS** and then given **TIME SERVED**, all three being illegal acts.

13. If under examination, it is determined that Coker was held in jail because of: DEFAULT in payment of a Class C fine, in violation of the Texas Code of Criminal Procedure 43.03(b) and (e), or CONTEMPT of Court, but without just cause, or FAILURE TO APPEAR, under T.P.C. 38.10(e), or PUNISHMENT OUTSIDE the confines of T.P.C. 12.23, or IMPRISONMENT FOR DEBT in violation of the Texas Constitution, or a SENTENCE outside the confines of law, in violation of the 8th Amendment, or the Judge was operating outside of JURISDICTION granted by the Texas Legislature, at C.C.P. 4.14, or the Texas Government Code 29.003 or 30.00005, or under any JUDGMENT not authorized by CCP Chapter 45, or any new charge under an Inability to Bond Out, in violation of Pulliam v Allen (supra) and Trezevant v Tampa, (supra), any one of which is a deprivation of DUE PROCESS protected by the 5th Amendment, then both Applicant Coker and we the people of the State of Texas. As such Byrum moves this Honorable Court to ORDER the Richardson Municipal Court Judge be made to answer accordingly, because each of these above instances are illegal.

DECLARATORY AND INJUNCTIVE RELIEF REQUESTED

14. Byrum further moves that this Honorable Court ask the Richardson Municipal Judge

if there are any other people similarly situated in the Richardson Jail, and if they are, that they be instantly discharged as well, and that the Richardson Municipal Judge be ordered to **cease and desist** from such illegal and unlawful practices and policies, by Declaratory and Injunctive Relief, as Coker is not in this life solely for himself, but also serves to benefit his brother and fellow creation of YHVH, and when and where they are being unlawfully held, Coker moves that they also be set free indeed.

REQUEST FOR DELAY IN HEARING

15. Now that Coker is out of the Municipal Jail, he has had to return to traveling around Texas for itinerant work, and cannot immediately return for hearing, and therefore Byrum moves this Court to set a hearing date sometime in the month of January 2011.

COPIES OF ORDER OR PROCESS

16. No copies of any order or process have been acquired at the time of the filing of this Petition for Habeas Corpus, therefore none can be tendered to this Court through the hands of Byrum. Applicant Coker has no means by which to acquire a copy and get it into this Court's hands.

17. Byrum has asked Coker to be available if possible, for testimony in this case, when this Court sets a hearing date.

18. Byrum reserves and repleads all arguments in the Original Petition for Habeas Corpus that still applies, even though Coker is now out of the Richardson Municipal Jail.

PRAYER

19. Byrum prays for the Writ of Habeas Corpus, and that the Richardson Municipal Court Judge who ordered Coker to be held in jail for TEN DAYS be made to answer.

ARREST

20. Byrum and Coker moves for the arrest of the Municipal Judge who ordered the jailing of Coker, or any other Detainer **if** the Respondent fails to respond to the Habeas Corpus, or if this Honorable Court determines that the Municipal Court Judge(s) or other Detainer(s) have acted outside the confines of ANY law.

Art. 11.17. [129] [177] [167] **JUDGE MAY ISSUE WARRANT OF ARREST.** Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.18. [130] [178] [168] **MAY ARREST DETAINER.** Where it appears by the proof offered, under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.

Acts 1965, 59th, Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.34. [146] [194] [184] **DISOBEYING WRIT.** When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.35. [147] [195] [185] **FURTHER PENALTY FOR DISOBEYING WRIT.** Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the writ for making the return thereto.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.47. [159] [207] [197] **MAY SUMMON MAGISTRATE.** To ascertain the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.61. [173] [221] [211] **REFUSAL TO OBEY WRIT.** Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in Article 11.34 of this Code.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.62. [174] [222] [212] **REFUSAL TO GIVE COPY OF PROCESS.** Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense, and shall be dealt with as provided in Article 11.34 of this Code for refusal to return the writ therein required.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

21. Byrum moves for this Court to ORDER the Officer charged with the Execution of the Warrant to Bring the Richardson Municipal Judge to this United States District Court, and have him bring all papers and documents touching this issue.

Art. 11.19. [131] [179] [169] **PROCEEDINGS UNDER THE WARRANT.** The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

22. Byrum declares that this Petition for Habeas Corpus is to show that there is no lawful right in the person who exercised powers against Coker, and/or that the powers exercised against Coker was in a manner or degree not sanctioned by law.

Art. 11.23. SCOPE OF WRIT. The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

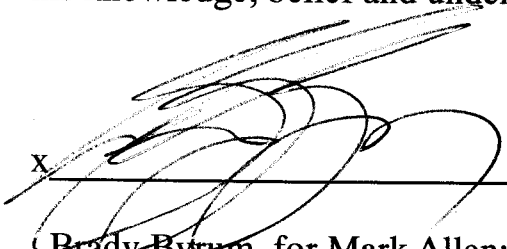
23. Byrum will seek to have all parties served with this Petition for Habeas Corpus by and through any competent witness.

Art. 11.26. [138] [186] [176] **WHO MAY SERVE WRIT.** The service of the writ may be made by any person competent to testify.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

AFFIRMATION

24. Byrum affirms all of the contents of this Petition is true and complete, to the best of his knowledge, belief and understanding, under 28 USC 1746(1).


x _____
Brady Byrum, for Mark Allen; Family of Coker

SERVICE AND RETURN

Art. 11.28. [140] [188] [178] **RETURN UNDER OATH.** The return of a writ of habeas corpus, under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

OATH

I, Brady Byrum, affirm that I faithfully served the City of Richardson Municipal Court and/or the Richardson City Police Department and Jail with at least two copies of this above Petition for Habeas Corpus, on this the _____ day of ~~December~~ December, 2010, by either hand delivery by a competent witness, or by Certified Mail.

