

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF TEXAS

Southern Division

MAY 22 2007

PETITION FOR A WRIT OF HABEAS CORPUS BY  
PERSON IN STATE CUSTODY

DAVID J. MALAND, CLERK

DEPUTY

1107CV0313

Curtis Wayne Smith  
PETITIONER  
(Full name of Petitioner)

Holliday Unit  
CURRENT PLACE OF CONFINEMENT

vs.

579703

PRISONER ID NUMBER

Brad Livingston  
RESPONDENT  
(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of petitioner)  
Brad Livingston CWJ

A-90-0508AR-And A90-0505AR  
CASE NUMBER  
(Supplied by the Clerk of the District Court)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum.
3. When the Clerk of Court receives the \$5.00 filing fee, the Clerk will file your petition if it is in proper order.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-ID, you must send in a certified *In Forma Pauperis* Data Sheet from the institution in which you are confined. If you are in an institution other than TDCJ-ID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. If you want to challenge judgments entered by different courts, either in the same state or in different states, you must file separate petitions as to each court.
6. Include all your grounds for relief and all the facts that support each ground for relief in this petition.
7. When you have finished filling out the petition, mail the original and two copies to the Clerk of the United States District Court for the federal district within which the State court was held which convicted and sentenced you, or to the federal district in which you are in custody. A "VENUE LIST," which lists U.S. District Courts in Texas, their divisions, and the addresses for the clerk's office for each division, is posted in your unit law library. You may use this list to decide where to mail your petition.
8. Petitions that do not meet these instructions may be returned to you.

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### **PETITION**

#### **What are you challenging?** (Check only one)

- ☐ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-23)  
probation or deferred-adjudication probation
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14, & 20-23)
- ☐ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-23)

#### **All petitioners must answer questions 1-4:**

1. Name and location of the court (district and county) which entered the conviction and sentence that you are presently serving or that is under attack:  
Orange County District Court 128<sup>th</sup> 801 West Division Ave, Orange Texas
2. Date of judgment of conviction: 10-20-1990
3. Length of sentence: 20 years and 10 years running concurrent.
4. Nature of offense and docket number (if known): 3<sup>rd</sup> Degree Agg. Assault A-90-0508  
Burglary Of Habitation 1<sup>st</sup> Degree A-90-0505,

#### **Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:**

5. What was your plea? (Check one)

☐ Not Guilty                      ☒ Guilty                      ☐ Nolo contendere

6. Kind of trial: (Check one)    ☐ Jury                      ☐ Judge Only

7. Did you testify at the trial? ☐ Yes ☒ No
8. Did you appeal the judgment of conviction? ☐ Yes ☒ No
9. If you did appeal, in what appellate court did you file your direct appeal?

None Cause Number (if known) None

What was the result of your direct appeal (affirmed, modified or reversed):                     

What was the date of that decision? None

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Result:                     None                    

Date of result:                      Cause Number (if known):                     

If you filed a petition for *writ of certiorari* with the United States Supreme Court, answer the following:

Result: None

Date of result:                     None                    

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state application for writ of habeas corpus that you may have filed.

☒ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: 128<sup>th</sup> County District Court of Orange County Texas,

Nature of proceeding: Writ of Habeas Corpus, Namely Art. 1107

Cause number (if known): A-90-0508 and A-90-0505

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court.

October 25<sup>th</sup> 2006

Grounds raised: Denial of Street Time Credits

Date of final decision: December 6<sup>th</sup> 2006

Name of court that issued the final decision: Court Of Criminal Appeal

As to any second petition, application or motion, give the same information:

Name of court: None

Nature of proceeding: None

None

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court.

None

Grounds raised: None

None

None

Date of final decision: None

Name of court that issued the final decision: None

*If you have filed more than two petitions, applications, or motions, please attach an additional sheet of paper and give the same information about each petition, application, or motion.*

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition?

☐ Yes ☒ No

- (a) If your answer is "yes," give the name and location of the court that imposed the sentence to be served in the future:

None

None

- (b) Give the date and length of the sentence to be served in the future: None

None

- (c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future?

☐ Yes ☒ No

**Parole Revocation:**

13. Date and location of your parole revocation: Date Unknown Orange County Jail
14. Have you filed any petitions, applications, or motions in any state or federal court challenging your parole revocation?

☐ Yes ☒ No

If your answer is "yes," complete Question 11 above regarding your parole revocation.

**Disciplinary Proceedings:**

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon? ☐ Yes ☒ No
16. Are you eligible for mandatory supervised release? ☒ Yes ☐ No
17. Name and location of prison or TDCJ Unit that found you guilty of the disciplinary violation:

None

Disciplinary case number: None

18. Date you were found guilty of the disciplinary violation: None

Did you lose previously earned good-time credits? ☐ Yes ☒ No

Identify all punishment imposed, including the length of any punishment if applicable, any changes in custody status, and the number of earned good-time credits lost: None

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?

☐ Yes ☒ No

If your answer to Question 19 is "yes," answer the following:

Step 1 Result: None

None

Date of Result: None

Step 2 Result: None

None

Date of Result: None

**All applicants must answer the remaining questions:**

20. State clearly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

**CAUTION:**

Exhaustion of State Remedies: You must ordinarily present your arguments to the highest state court as to each ground before you can proceed in federal court.

Subsequent Petitions: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

Following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement is a separate ground for possible relief. You may raise any grounds, even if not listed below, if you have exhausted your state court remedies. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your belief that you are being held unlawfully.

**DO NOT JUST CHECK ONE OR MORE OF THE LISTED GROUNDS.** Instead, you must also STATE the SUPPORTING FACTS for ANY ground you rely upon as the basis for your petition.

- (a) Conviction obtained by a plea of guilty which was unlawfully induced, or not made voluntarily, or made without an understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by the use of a coerced confession.
- (c) Conviction obtained by the use of evidence gained from an unconstitutional search and seizure.
- (d) Conviction obtained by the use of evidence obtained from an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the prosecution's failure to tell the defendant about evidence favorable to the defendant.
- (g) Conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (h) Conviction obtained by a violation of the protection against double jeopardy.
- (i) Denial of effective assistance of counsel.
- (j) Denial of the right to appeal.
- (k) Violation of my right to due process in a disciplinary action taken by prison officials.

A. **GROUND ONE:** Denial of Street Time Credit ON  
Sentence.

Supporting FACTS (tell your story briefly without citing cases or law):

The Applicant then after filed A Petition Namely A Writ  
Of Habeas Corpus Art. 1107 on the date of 10-25-2006.  
The Applicant Recieved A Rendered Decision from the  
Court Of Criminal Appeals On the date of 01-10-2007 of  
"Denied Without A Written Order"

B. **GROUND TWO:** None  
None

Supporting FACTS (tell your story briefly without citing cases or law):

None  
None  
None  
None  
None  
None

C. **GROUND THREE:** None  
None

Supporting FACTS (tell your story briefly without citing cases or law):

None  
None  
None  
None  
None

D. GROUND FOUR: None

Supporting FACTS (tell your story briefly without citing cases or law):

None

None

None

None

21. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation, or disciplinary proceeding that you are attacking in this petition?

☐ Yes ☒ No

If your answer is "yes," give the date on which each petition was filed, the federal court in which it was filed, and whether the petition was (a) dismissed without prejudice or (b) denied.

None

None

None

22. Are any of the grounds listed in paragraph 20 above presented for the first time in this petition?

☒ Yes ☐ No

If your answer is "yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

Supplemental Brief attached



# Supplemental Brief For A 1 of 1

## Writ of Habeas corpus ART, 2254.

### I

On or about The date of OCT, 20<sup>th</sup> 1990 The Applicant was Arrested and Sentenced To 10 years. for Aggravated Assault cause #A-90-0508 And Also for Burglary of Habitation Cause #A-90-0505 Then Sentenced To 20 yrs. Both Charges Happened at The Same Time And The 20 and 10 year sentence Are running concurrent. Both Charges plead guilty in The 128<sup>th</sup> County District Court of Orange Texas Under The Honorable Judge PAT Clark. The Applicant was released on The date of Sept. \_\_\_ 1992. Therafter returned on JAN. \_\_\_ 1995 Applicant was released on The date of SEPT. 9<sup>th</sup> 1999. And returned on JAN 22<sup>nd</sup> 2006. The Applicant AT The present Time remain's Incarcerated in The Texas Dept. of Criminal Justice - ID. The Total Flat Time Credit on The 20 years. AS of 03-28-07 is 8yrs. 4mon. and 4days.

### II

By Denying Street Time Credits This in Turn is A question wheather The Sentence Imposed is Lengthened or made more Severe A Punishment Then perscribed By A Court of Law. Every Prisoner while on Parole Shall Be amendable To Conditions of Supervision as ordered By The Board. Street Time is Calculated as (Flat Time) Also it is (Calender Time) The Applicant Hereby Hopes and Prays The DISTict Court US. DISTict Clerk's office 300 willow Street Room 104 Beaumont Texas 77701 would grant "Reward" of Street Time credit That He Has earned.

23. Do you have any habeas corpus proceedings or appeals now pending in any court, either state or federal, relating to the judgment or proceeding under attack?

☐ Yes ☒ No

If "yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed.

None  
— — None

Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

None  
Signature of Attorney (if any)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare (or certify, verify, or (state)) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on May 10<sup>th</sup> 2007 (month, date, year).

Executed on May 10<sup>th</sup> 2007 (date).

Curtis Wayne Smith  
Signature of Petitioner (required)

Petitioner's current address: Holiday Unit 295 I.H. 45 North  
Huntsville Texas 77320-8443