

**COURT OF CRIMINAL APPEALS OF TEXAS
APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07**

INSTRUCTIONS

- 1. You must use the complete form, which begins on the following page, to file an application for a writ of habeas corpus seeking relief from a final felony conviction under Article 11.07 of the Code of Criminal Procedure. (This form is not for death-penalty cases, probated sentences which have not been revoked, or misdemeanors.)**
- 2. The clerk of the trial court in which you were convicted will make this form available to you, on request, without charge.**
- 3. You must file the entire writ application form, including those sections that do not apply to you. If any pages are missing from the form, or if the form has been downloaded and the questions have been renumbered or omitted, your entire application will be returned as non-compliant. If your application is returned as non-compliant, the clerk of the trial court will write a note of the defect on your application and return the form to you without filing it.**
- 4. You must make a separate application on a separate form for each judgment of conviction you seek relief from. Even if the judgments were entered in the same court on the same day, you must make a separate application for each one.**
- 5. Answer every item that applies to you on the form. You may use additional pages only if you need them for item 17, the facts supporting your ground for relief. Do not attach any additional pages for any other item 17.**
- 6. You must include all grounds for relief on the application form as provided by the instructions under item 17. You must also briefly summarize the facts of your claim on the application form as provided by the instructions under item 17.**
- 7. Do not cite cases or other law in this application form. Do not make legal arguments in this form. Legal citations and arguments may be made in a separate memorandum.**
- 8. You must verify the application by signing either the Oath Before Notary Public or the Inmate's Declaration, which are at the end of this form on pages 11 and 12. You may be prosecuted and convicted for aggravated perjury if you make any false statement of a material fact in this application.**
- 9. When the application is fully completed, mail the original to the clerk of the convicting district court. Keep a copy of the application for your records.**
- 10. You must notify the clerk of the convicting district court of any change in address after you have filed your application.**

**WRIT NO. W79-12900-RI(D)
CAUSE NO. F79-12900-RI
COA NO. _____**

EX PARTE § IN THE CRIMINAL
 §
 § DISTRICT COURT NO. 2
 §
CORNELIUS DUPREE, JR. § DALLAS COUNTY, TEXAS

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

NAME: Cornelius Dupree, Jr.

DATE OF BIRTH: 09/22/1959

PLACE OF CONFINEMENT: N/A

TDCJ-CID NUMBER: 00308310

SID NUMBER: 02561023

(1) This application concerns (check all that apply):

- | | | | |
|-------------------------------------|---------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | a conviction | <input checked="" type="checkbox"/> | parole |
| <input type="checkbox"/> | a sentence | <input checked="" type="checkbox"/> | mandatory supervision |
| <input type="checkbox"/> | time credit | <input type="checkbox"/> | out-of-time appeal or petition for discretionary review |

**(2) What district court entered the judgment of the conviction you want relief from?
(Include the court number and county.)**

Criminal District Court No. 2 of Dallas County

(3) What was the case number in the trial court?

F-79-12900-RI

(4) What was the name of the trial judge?

Honorable Wardlow Lane, sitting for Honorable Don Metcalfe.

(5) **Were you represented by counsel? If yes, provide the attorney's name:**

Daniel F. Solis, Esq.

(6) **What was the date that the judgment was entered?**

April 3, 1980.

(7) **For what offense were you convicted and what was the sentence?**

Offense: Aggravated Robbery with a Deadly Weapon

Sentence: 75 years

(8) **If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?**

N/A

(9) **What was the plea you entered? (Check one.)**

guilty-open plea

guilty-plea bargain

not guilty

nolo contendere/no contest

If you entered different pleas to counts in a multi-count indictment, please explain:

N/A

(10) **What kind of trial did you have?**

no jury

jury for guilt and punishment

jury for guilt, judge for punishment

(11) **Did you testify at trial? If yes, at what phase of the trial did you testify?**

No.

(12) **Did you appeal from the judgment of conviction?**

yes

no

If you answered yes, please provide the name of the court and the case number:

- (16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

N/A

yes

no

If you answered yes, answer the following questions:

(A) What date did you present the claim? _____

(B) Did you receive a decision and, if yes, what was the date of the decision?

If you answered no, please explain why you have not submitted your claim:

- (17) Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.*

If you have more than four grounds, use page 10 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence.

You may attach a memorandum of law to the form application if you want to present legal authorities, but the Court will *not* consider grounds for relief in a

memorandum of law that were not stated on the form application. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum.

GROUND ONE:

Newly Discovered DNA Evidence Establishes that Mr. Dupree Is Innocent of the Offense for Which He Was Convicted. The New DNA Evidence, Considered in Light of the Trial Record as a Whole, Establishes that No Rational Jury Would Have Found Proof of Mr. Dupree's Guilt Beyond a Reasonable Doubt Had the DNA Evidence Been Available at Trial.

FACTS SUPPORTING GROUND ONE:

Advanced DNA testing conclusively demonstrates that Mr. Dupree is innocent of this crime. On November 23, 1979, two male perpetrators accosted two victims—one male ("J.P.") and one female ("L.B.")—at gun point in a parking lot and forced them into the male victim's car. J.P. was then compelled to drive on the highway, during which time the perpetrators robbed both victims of money and personal property. The perpetrators then instructed J.P. to pull over at a highway exit, where he was ordered to exit the vehicle. The perpetrators then drove L.B. to a nearby park, where each perpetrator vaginally raped her inside the vehicle while the other perpetrator threatened her with a gun. The perpetrators then pushed L.B. from the car and drove away. L.B. ran towards the highway, where she collapsed in the roadway and was discovered shortly thereafter by police. After interviewing both victims, the police took L.B. to Parkland Hospital, where a rape kit was collected.

On December 2, 1979 the female victim selected Mr. Dupree's and co-defendant Anthony Massingill's photographs from a photo array as the individuals she believed to be the perpetrators. The male victim, however, was unable to identify either defendant in

the same photo array. At the identification hearing and trial, which took place approximately four months after the attack, both victims identified Mr. Dupree and Mr. Massingill in court as the men they believed were the perpetrators.

Both defendants were ultimately convicted of aggravated robbery. Mr. Dupree presented a misidentification defense. After obtaining the instant conviction, the State dismissed the charge against Mr. Dupree for aggravated rape arising from this same incident. As recorded in the trial prosecutor's Motion to Dismiss Prosecution, the dismissal was sought due to the expense involved in a subsequent jury trial and in light of the fact that a conviction on the aggravated rape charge would not have resulted in the imposition of any additional prison time, given the term to which Mr. Dupree had already been sentenced on the aggravated robbery conviction. It is undisputed, however, that the same two individuals who committed the robbery also committed the rape against L.B.

DNA testing using the STR and Y-STR methods, neither of which was available at the time of Mr. Dupree's trial, has now scientifically proven that Mr. Dupree is innocent of the rape of L.B. DNA testing has confirmed the presence of two male DNA profiles in seminal fluid (including spermatozoa) recovered from the victim's pubic hair cuttings, and has conclusively excluded both Mr. Dupree and Mr. Massingill as the source of this DNA. Furthermore, the female victim informed the physician who examined her immediately after the assault that she had not engaged in sexual intercourse in the previous month, which further establishes that the two male DNA profiles obtained from the rape kit came from the perpetrators of the rape and robbery. In light of these facts, the newly discovered DNA results prove Mr. Dupree's actual innocence and

establish that no rational jury would have convicted him of this crime.

Please see attached Memorandum of Law for further background and supporting authorities.

WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.

VERIFICATION

(Complete EITHER the “oath before a notary public” OR the “inmate’s declaration.”)

OATH BEFORE NOTARY PUBLIC

STATE OF TEXAS, COUNTY OF _____.

_____, BEING FIRST DULY SWORN, UNDER OATH,

SAYS: THAT HE/SHE IS THE APPLICANT IN THIS ACTION AND KNOWS THE CONTENT OF THE ABOVE APPLICATION AND ACCORDING TO APPLICANT'S BELIEF, THE FACTS STATED IN THE APPLICATION ARE TRUE.

Signature of Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____.

Signature of Notary Public

INMATE’S DECLARATION

I, _____, BEING PRESENTLY INCARCERATED IN _____, DECLARE UNDER PENALTY OF PERJURY THAT, ACCORDING TO MY BELIEF, THE FACTS STATED IN THE APPLICATION ARE TRUE AND CORRECT.

SIGNED ON _____.

Signature of Applicant

Signature of Attorney

Attorney Name: Robert C. Hinton, Esq.

SBOT Number: 09110800

Address: Robert Hinton and Associates
4040 North Central Expressway, Suite 810
Dallas, TX 75204

Telephone: (214) 219-9300