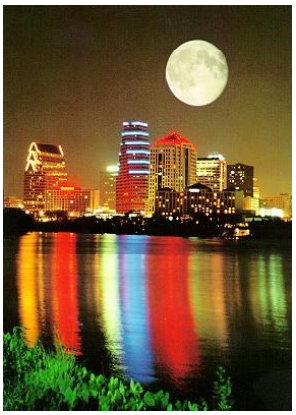

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Vol. 7, No. 21 - May 31, 1999

Case Name: Ex parte Norman Edward Carrio

- OFFENSE: Post-Conviction Habeas Corpus
- COUNTY: Harris
- CRIM. APPEALS No. 73,180
- DATE OF OPINION: May 26, 1999
- JUDGE: Price, J.
- DISPOSITION: Case Remanded for Further Proceedings

561 Post-Judgment Proceedings / Procedures: Applicant was convicted of murder and attempted murder, with punishment being assessed at 60 years and 20 years, respectively. Both convictions were affirmed in unpublished decisions in 1984, and PDR was refused. In this application, Applicant contends that his convictions should be set aside as he received ineffective assistance of counsel. Specifically, he has raised numerous contentions regarding counsel's alleged failure to investigate, interview witnesses, and prepare for trial. The trial court has entered findings of fact and conclusions of law, based upon the State's response, stating that due to Applicant's fourteen year delay in waiting to attack the instant convictions, the State's ability to respond has been prejudiced. The trial court recommends relief be denied under the doctrine of laches.

Holding: We agree with the State that the doctrine of laches is a theory which we may, and should, employ in our determination of whether to grant relief in any given 11.07 case. The fact that Texas has no statute or rule comparable with [federal] Rule 9(a) is notable but not ultimately prohibitive, since laches is an equitable common-law doctrine. However, neither the State, nor the Applicant, had the benefit of the instant opinion. Therefore, we do not believe the issue of laches has been properly presented by the parties and this Court still lacks sufficient information upon which to evaluate Applicant's claims of ineffective assistance of counsel or the State's claim of laches.

Notes: Judge Meyers filed a dissenting opinion, in which he was joined by Judge Womack, and in which he argued that "[I]t is for the Legislature, not the courts, to remedy defects or supply deficiencies in the laws . . .," and that this Court is without the authority to adopt laches into its habeas corpus jurisprudence ("In holding laches applicable to 11.07 petitions for post-conviction writs of habeas corpus, the Court is plainly legislating").

Comment: (David A. Schulman) agree with Judge Meyers and Judge Womack.. The Court first notes that it has never denied relief on a valid claim due to an applicant's delay in bringing the claim and that, on the contrary, "we have held that we have no desire to impose upon defendants the requirement that claims for relief be asserted within a specified period of time." As Judge Meyers points out, the federal courts utilize laches because there is a federal statute that makes it possible. Personally, I think that, when the majority states that "The fact that Texas has no

statute or rule comparable with [federal] Rule 9(a) is notable but not ultimately prohibitive, since laches is an equitable common-law doctrine . . .," it is adopting a holding in direct contravention of its holding in Ex parte James Carl Lee Davis, 947 S.W.2d 216 (Tex.Cr.App. 1996)(see Greenwood & Schulman, Vol. 4, No. 49; December 18, 1996), in which the Court held that it's power under Article V of the Texas Constitution is limited by the provision that makes such power subject to "regulation" by the Legislature. Since the Legislature saw fit to limit the time in which habeas corpus claims can be raised in capital cases but did not do so in non-capital cases, this Court should take that as a Legislative decision not to restrict access to the habeas corpus process. If the Legislature wanted to put a time limit on habeas corpus applications in non-capital cases it would have done so back in 1995 when it adopted Article 11.071, V.A.C.C.P., just like the feds did when they adopted the "Effective Death Penalty and Anti-Terrorism" law in 1996 . . . which limited the time of access in both capital and non-capital cases. So, whether the majority here wants to admit it or not, they are legislating.