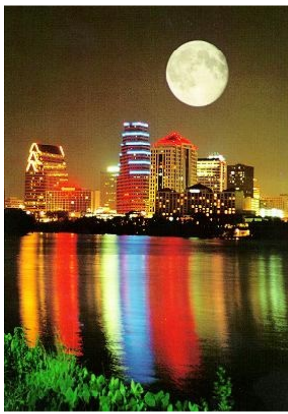

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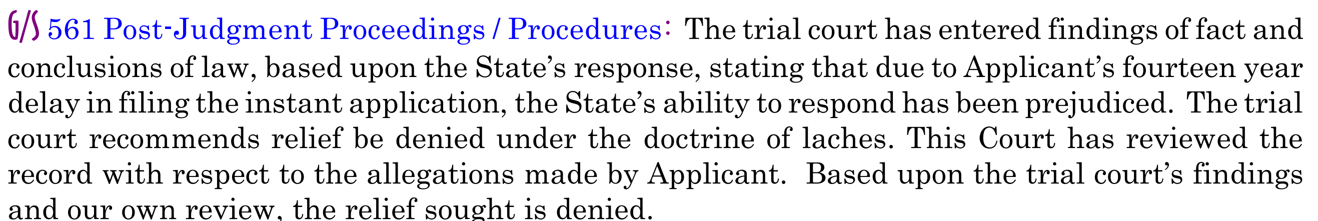
G&S Vol. 7, No. 50 - December 20, 1999

Case Name: Ex parte Norman Edward Carrio

- OFFENSE: Post-Conviction Habeas Corpus
- COUNTY: Harris
- CRIM. APPEALS No. 73,180
- DATE OF OPINION: December 15, 1999
- JUDGE: Price, J.
- DISPOSITION: Relief Denied

Case Note: On original submission the Court determined that, under the appropriate circumstances, the State could use the common law doctrine of "laches" as a defense to a post-conviction habeas corpus application. However, finding that it lacked "sufficient information upon which to evaluate Applicant's claims of ineffective assistance of counsel or the State's claim of laches," the Court remanded the case to the trial court for collection of evidence. See Ex parte Carrio, 992 S.W.2d 486 (Tex.Cr.App. 199)(see Greenwood & Schulman, Vol. 7, No. 21; May 31, 1999).



G/S 561 Post-Judgment Proceedings / Procedures: 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 filing the instant application, the State's ability to respond has been prejudiced. The trial court recommends relief be denied under the doctrine of laches. This Court has reviewed the record with respect to the allegations made by Applicant. Based upon the trial court's findings and our own review, the relief sought is denied.

Comments: What the hell is this? The Court fails to state whether there is support in the record for the trial court's findings, whether the findings are adopted, whether the conclusions are adopted and, more importantly, whether the trial court's "conclusion" that laches should bar prosecution of the habeas corpus application was adopted. This opinion doesn't say that Applicant is denied relief because of laches - only that the Court has conducted its own review. Now, this could be really poor writing or it could by crafty design, but we'll never know what either side proved or if there was really an evidentiary hearing. Since we don't know how the State was prejudiced by the fourteen year delay, or why the Applicant waited fourteen years to file his application, we have nothing to apply this to. Nevertheless, the Court's original opinion in this case stands as classic example of how to legislate from the bench, and, under the right set of facts and circumstances, laches will be applied against some unsuspecting applicant who otherwise has a good claim. It's just a shame that the Court picked this case to legislate the common law doctrine of laches into Chapter 11 jurisprudence after it had specifically said it lacked that power 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)(Mr. Greenwood's case and, yes, the same defendant/applicant discussed in the Garza, case, supra. Mr. Davis has been dead

(executed) about two years now and I'm sure he'd find it . . . uh . . . interesting how the holdings that denied him relief have been ignored so as to deny relief to other defendants. I wonder what he'd have to say about that.)