

IS ANYBODY LISTENING?

By

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On June 9, 2001 I was arrested and prosecuted in Fannin County, Texas for five crimes. Unlawful possession of a firearm, burglary of a habitation, aggravated kidnapping and two counts of aggravated robbery. This sounds like a crime spree of dramatic proportions; however, the only crime I was guilty of was unlawful possession of a firearm. After casual inquiries it was learned, that the reason I was in possession of this firearm was because I had taken it off my then, seventeen year old son. I was assessed one day in jail, time served. In time, the other four alleged offences were investigated and I was found not to be involved. An eyewitness cleared me of the burglary. The two robberies were from the taxi driver, Darin Rae Barnett, who sold me a broken down car for \$200.00 and was afraid I would retaliate or at least want my money back, so he fabricated the robbery and kidnapping charges. After investigators learned of this the robbery charges were dropped. That left the kidnapping charge.

Being an ex-offender from California made me fair game for the "Texas" judicial system. Fannin County was not going to let this go even though all evidence pointed to a higher percentage that in all likelihood I did not kidnap or rob anyone. A deal was offered for a lesser offence. I refused because I had done nothing wrong. This refusal seemed to infuriate the then Assistant District Attorney, Billy Ray Gant, so he orchestrated a one day trial disregarding all standard rules of the court. Rights guaranteed by the U.S. Constitution were ignored and stomped on as if we were in some third world country under the dictatorship of some self appointed lunatic.

I was appointed an attorney, Donnie Jarvis Jr. who was paid by this very entity of the law that was persecuting me, and did very little to slow things down. Defense Counsel, Donnie Jarvis, Jr. did preserve trial errors and "promised" at the end of the one day trial, to use them to undo the injustice that was my conviction, *if* I allowed him to

be appointed by the trial court to do the direct appeal to the Texas Court of Criminal Appeals. Dazed by the verdict and eager to believe in anything that promised to fix this mess, I agreed. After all, who better to argue trial errors than the trial attorney, right? So off to prison I go for a crime that never happened. My lawyer, Mr. Jarvis, on the other hand, got another check from Fannin County to do the direct appeal, which he did. Mr. Jarvis attacked none of the reversible errors he himself preserved and never notified me when the appeal was done or affirmed by the appellate court.

I didn't know it at the time, but according to the 1996 enactment of the AEDPA (anti-terrorism and effective death penalty act), I had one year to file any pro se, (Self litigated), and post conviction claims and that the clock started ticking with the affirmation of my conviction by the appellate court. The Court of Criminal Appeals does not notify the incarcerated when they affirm a conviction; they contact the attorney who filed the appeal. By law it is his duty to notify his client, which in my case, he did not. I happened to learn of my being affirmed by reading it in the prison law library. This began ^{Fifteen} ~~twelve~~ years of pro se litigation, trying to win my freedom from an unlawful conviction. I say "unlawful" because the Assistant District Attorney, Mr. Gant, in this case literally aided and abetted the only material witness, the taxi driver, Mr. Barnett, in my trial in aggravated perjury before the jury just to get a conviction.

Who cares, right? Just another ex-offender off the streets. Rather than admit that they or their officials made a mistake, Fannin County and her officials began manipulating the system to keep me in prison or keep the erroneous conviction off the books. How can this be? Why would such an esteemed collection of elected officials strive to do such a thing? Aren't there other entities of the legal system in place to oversee and prevent this happening?

As stated before, I am an ex-offender from California living in Texas. I am a United States Citizen and am afforded the rights and privileges set forth in the U.S. Constitution. I am "We the People" and so are you. I moved to Texas to be with my wife and son. I had a good job and was striving to be a better person for my family and myself, just a regular person, that's me. So let's look at the other side of this.

Our judicial officials, Judges, District Attorneys, Sheriffs, etc. are elected by the community in which they serve, so they are answerable to that community, however large

or small. The bigger the city or town the more of them it takes to serve that community. They are even paid by that community. But that community is only aware of what is reported by the media. How many people in our communities actually go to the records department of the county court house and look up the track record of a D.A. or judge? Not unless some drastic case has drawn media attention is it ever brought up. Those cases are predominately cases that have been overturned or deemed "Wrongful convictions." A judge's name will usually follow a case like that. Whether he or she was the reason they were wrongfully convicted or the judge, who set the accused free on a technicality, neither is looked upon favorably by the community.

District Attorney's track record is measured by his "Conviction Rate". Which means of 100 people *accused* of a crime in his community, he convicts 90 of them giving him a 90% conviction rate. This measurement has nothing to do with guilt or innocence, or for that matter, justice. In our legal system an arrested person is deemed innocent until proven guilty. If you succeed in proving your innocence, this is a slight on the District Attorney's conviction rate. In my own experience with the Texas judicial system, if you are arrested, you're fair game for the mammoth prison system that seems to be the very backbone of the Texas economy.

"If it ain't full, we ain't making no money". Texas has over 130 operating privately owned or state prison in its borders. It gets federal funding and has a population of around or over 150,000 people. This doesn't include drug programs, outpatient sex offender programs or facilities designed to house juveniles. It is manned by so many people that Texas has to import Nigerians to be prison guards. Lately, a good percentage of prison guards are barely able to speak English and are of the mind set that what they have as a job is far better than what they came from, so they are perfect for an environment that often demands a blind eye to its tactics. ~~Please~~, don't get me wrong, a lot of the inmates actually earned their long sentences and deserve to be here, however, Texas leads the country in wrongful convictions. It's easy to fathom when you consider all the elements involved. The District Attorney, with his eye on his conviction rate, the judge with his eye on the next election and the director of corrections with all those beds to fill. All of this and human error or emotions.

In my case I was told point blank by the Assistant District Attorney, Billy Ray Gant that he "WOULD GET ME ON THIS LAST CHARGE" Which was Aggravated Kidnapping of the taxi driver, Darin Rae Barnett, and no amount of "Slithering" would get me out from under it like the other three charges. The "Slithering" he was speaking of was irrefutable evidence of my innocence. His pride dictated his actions and instead of arresting the taxi driver, Darin Rae Barnett, for perjury, he manipulated the court to convict me and send me away. This is useful in two ways; First, it tells anyone else in the county jail relying on the law to protect them that it isn't wise to turn down an offered plea bargain and second, it puts one who did, ^{turn one down} away for 25 years. Why not? Who's going to hold them accountable? The Appellate Courts? To do that, they would have to overturn a conviction and that would get their name in the paper. We have several appellate court systems in place supposedly to ensure that we, as U.S. citizens, are at least treated fairly, right? When a person is convicted in a jury trial it's because a jury of his peers was presented evidence by the prosecutor to refute his "Not guilty" plea. He is entitled to legal representation to defend against this, by law, and or by a learned and qualified defense attorney. In fact, if he cannot afford an attorney on his own, one is appointed him by the state, the very entity prosecuting him. Often times though, ethics forbid this. This appointed lawyer works directly for the District Attorneys office, insisting that it's in your best interest to take an offered plea bargain. To do that you admit to some degree of guilt and an agreed on sentence is handed down by the presiding judge. Otherwise you go to trial.

At the beginning, it's important to review the states constitutionality imposed duty to investigate and prosecute criminal charges with fairness. Due process obliges the state to disclose exculpatory evidence, (Hard, tangible evidence), to one accused of a crime. This obligation originates in early 20th century strictures against misrepresentation by member of the bar and is most predominantly associated with the United States Courts decision in Brady v. Maryland, (Cited as Brady v. Maryland 373 U.S. 83, 86. 83 S. Ct. 1194, 1196. 10 L. Ed. 2d 215 (1963)). A monumental case telling these lower courts you have to treat the people fairly. The most common practice, "Withholding evidence favorable to the accused", is a common occurrence in Texas courts. It is part of what the prosecutor did in my case. Every facet of the law dictates immediate reversal if proven.

So, how am I still in prison after ¹⁵~~14~~ years? Good question. In June of 2001 I was arrested, after two trials and nearly a year in jail fighting the charges, I was convicted and sent to prison for 25 years. In December of 2003 my conviction was affirmed by the Texas Court of Criminal Appeals, no petition for discretionary review, (A step to oversee the decision but my appellate attorney made sure I couldn't do that by sandbagging the decision and time-barring me from that procedure). As one might imagine, an innocent man in prison's only narrow avenue of relief from a wrongful conviction is the prison law library. This is where I learned that the Texas Court of Criminal Appeals had affirmed my conviction six months after the fact.

I read the appeal and decision in the new Texas Law Journal which covered the most recent decisions in the court of appeals. My attorney, Donnie Jarvis Jr., who "Promised and swore", based on errors he himself preserved in trial, that I would be out and this conviction overturned as a matter of law. He never addressed any of the reversible issues. In fact he argued that the jury instructions were improper by the judge. The accused, that's me, is entitled to appointed legal representation only during trial and the direct appeal. Anything else he has to provide himself or do it himself, (Pro se). Since I had no money I had to go pro se.

In November 2004, one month before my one year time limitation expired, I filed a state habeas corpus. A writ to the courts solely for anyone who's liberty has been taken in error. The common man's weapon against a courts injustice. This writ sets out claims and describes when they happened, how they affected the rights of the accused and where they can be found in the law. This writ goes right back to the convicting court. Laws that govern post conviction litigation give this court 35 days to process this writ by designating any unresolved issues or denying it and sending it on to the next court. One must complete each step in each court or your petition is deemed un-exhausted and can be dismissed for this reason.

After 90 days of waiting for Fannin County to process the writ, I wrote to ask about it, only to be ignored. I filed a writ of Mandamus in a higher court. (Mandamus is to compel a lower court to act, stop delaying). In March of 2005 an order was handed down DEMANDING that Fannin County process my writ. The court gave them 30 days. Fannin County ignored the order, so what? Nothing was ever done, let you or me ignore

a court order and see what happens. I sued them for the writ *five months later*. Fannin County responded with a general denial bypassing the standard procedures set forth in the law books. The next step for a pro se litigant is to appeal to the very court that ignored Fannin Counties total disregard for *their order*, the Texas Court of Criminal Appeals, who didn't even read it. "*Denied without written order.*" But now I was able to enter the federal courts under section 22.54 (Federal Writ of Habeas Corpus). They "Time barred me" for taking too long to file. My conviction was affirmed on December 18, 2003. My Federal Petition for writ of Habeas Corpus was filed on May 22, 2006, well over the *one (1) year time limitation* given by the AEDPA. Ultimately I was allowed to proceed when I proved that the convicting county had repeatedly delayed the process causing my rights to be violated etc. So what, in fact between my entry into the federal court of appeals on May 22, 2006 to the present, not once has my claim under the afore mentioned Brady v. Maryland case been addressed, except to say that I have not exhausted it properly. My trial hinged upon the word of *one man*, Darin Rae Barnett, who was allowed to take the stand and lie, and the prosecutor knew he was lying but did nothing.

The Federal Judge, Ron Clark, dismissed my petition with prejudice without ever addressing the issue. Almost 13 years to the day of arguing with the states Attorney Generals office, under Greg W. Abbott, proving prosecutorial misconduct, perjury, Brady infractions, constitutional violations and a complete disregard for the very rules set in place to protect me, I was told to "**go away and don't come back!**" Now I have to petition the 5th Circuit Court of Appeals for Certificate of Appeal ability or I can't appeal.

~~That's where I am right now. Waiting....., again.~~ This too was denied on procedural errors.

Let's face facts here, since there is absolutely no accountability for the treatment of the common man, unless he has thousands and thousands of dollars to throw into the legal system, who's going to stop them? Why should they care at all? This prison, where I am now, is full of men who are wondering, "What happened?" One day they were a productive member of society and the next he's before some aspiring prosecutor trying to boost his conviction rate and become the next political marvel. The law books are full of precedent setting cases by the U.S. Supreme Court instructing the lower courts to overturn cases like mine, but, who's listening? What has happened is you, as a society,

are creating another class of people who are growing in numbers and will, one day; get tired of being lied to, and warehoused in prison as a matter of vocation? All one has to do to see its effect today is turn on the T.V. and watch the news. People shooting one another with no regard for anyone else, rioting in the streets, blowing things out of proportion, killing their families, preying on the old and weak. Jails are full of men waiting to go to prison for the slightest infraction. How about a man who rises from all that and is on his way to a better chosen path, but is persecuted by the very law that's there to protect him, for nothing? He's robbed of the best years of his life, loses his family and told that no one cares.

In the aftermath of a tragic event where someone has killed or hurt other people, I've noticed that all the news programs come to the same conclusion, "a cry for attention", and say "Why didn't they tell someone this was going on?" Maybe "They" did when "They" went on a shooting spree, but no one was listening. Are you?

If you're reading "Is Anybody Listening?" it was written in 2013. Walter had dedicated the last 16 years to continually fight for his innocence and will do so until he's free. This is a blatant malfeasance with Fannin County and should be addressed. How many other "Innocent" people have been taken advantage of and are still sitting where Walter is now, still.

I and the people who love Walter want him back in their lives.