

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05- **9108**

**TRANSFER OF CASE FROM FOURTEENTH
TO ELEVENTH COURT OF APPEALS**

ORDERED:

Cause No. 14-05-00355-CR, *Timothy Lynn Hall v. State of Texas*, is transferred from the Court of Appeals for the Fourteenth Court of Appeals District, Houston, Texas, to the Court of Appeals for the Eleventh Court of Appeals District, Eastland, Texas.

The Fourteenth Court of Appeals will make the necessary orders for the transfer of said case as directed hereby, and will cause the Clerk of that Court to transfer the original transcript and all filed papers in the case, and certify all Orders made, to the Eleventh Court of Appeals. Upon completion of the transfer, the Fourteenth Court of Appeals shall provide notice of the transfer to the Supreme Court and the State Office of Court Administration.

As Ordered by the Supreme Court of Texas, in chambers,

With the Seal thereof affixed at the City
Of Austin, this 28th day of June, 2005.


ANDREW WEBER, CLERK
SUPREME COURT OF TEXAS

SUPREME COURT OF TEXAS

AT AUSTIN, TEXAS

**MOTION FOR TRANSFER
UNDER TEX. GOV'T CODE § 73.001**

**IN RE: APPEAL OF JUDGMENT IN TRIAL CASE CAUSE NO. 977663
Appellate Case No. 14-05-0035-CR**

**IN THE 185TH JUDICIAL DISTRICT COURT
OF HARRIS COUNTY, TEXAS**

**COMPANION CASE NO. 11-05-00018-CR
Appeal from Cause No. 977662
In the 185th Judicial District Court of Harris County, Texas
Hon SUSAN BROWN, Judge Presiding**

COPY

**PRESENTLY PENDING IN THE
11TH COURT OF APPEALS
EASTLAND, TEXAS**

**FILED
IN COURT OF APPEALS
ELEVENTH DISTRICT
APR 18 2005**

styled

TIMOTHY LYNN HALL, APPELLANT

**SHERPY WILLIAMSON, CLERK
By *Sherpy* Deputy**

VS.

STATE OF TEXAS

**Alex G. Azzo
770 South Post Oak Lane
Suite 620
Houston, Texas 77056
Bar No. 01475500
713/461-3772
713/552-0746 (fax)
Attorney for Appellant
Timothy Lynn Hall**

MOTION FOR TRANSFER

under TEX. GOV'T CODE § 73.001

TO THE HONORABLE SUPREME COURT OF TEXAS at Austin, Texas:

COMES NOW TIMOTHY LYNN HALL, Movant, seeking relief from this Honorable Court. Presently pending in the Fourteenth Court of Appeals, Houston, Texas, is Appellate Case No. 14-05-00355-CR, styled Movant v. State of Texas. Appellate Case No. 14-05-00355CR is the appeal of the judgment rendered against Movant in Cause No. 977663 in the 185th Judicial District Court of Harris County, Texas, Hon. Susan Brown, Judge presiding. Cause No. 977662 also from the 185th Judicial District Court of Harris County, Texas, Hon. Susan Brown, Judge presiding, is the companion case of Cause No. 977663 (14-05-00355-CR) and is also on appeal. The appeal of Cause No. 977662 is also styled Movant v. State of Texas but is presently pending in the Eleventh Court of Appeals, Eastland, Texas as Appellate Case No. 11-05-00018-CR (previously transferred Case No. 14-04-01230-CR). Movant asks this Court to exercise its authority under Tex. Gov't Code § 73.001 and order the transfer of Appellate Case No. 14-05-00355-CR to the Eleventh Court of Appeals, Eastland, Texas, where its Movant shows the Court as follows:

I.

MOVANT was found to be indigent, and he was appointed counsel at trial. MOVANT entered “not guilty” pleas in Cause Nos. 977662 (Burglary of a Habitation) and 977663 (Possession of a Controlled Substance – Cocaine – less than 1 gram) on December 6, 2004, in the 185th District Court. Both cases arose from the same transaction and they were tried together on December 6, 2004. A jury was waived. On December 6, 2004, the Hon. Susan Brown found MOVANT guilty of the following offenses and sentenced MOVANT to:

Cause No. 977662 11-05-00018-CR and	Trespass to a Habitation	1 year confinement in the Harris County Jail
Cause No. 977663 14-05-00355-CR	PCS (enhanced)	15 years confinement TDCJ-ID

II.

On December 20, 2004, MOVANT filed his “Motion for Appointment of a Court Appointed Appellate Attorney” in Cause No. 977663. The trial court did not appoint counsel on this appeal until March 30, 2005.

III.

MOVANT was found to be indigent at trial in Cause Nos. 977662 and 977663. Furthermore, Movant has been declared indigent in both appeal cases. Alex G. Azzo now represents Movant in the appeals of both Cause Nos. 977662 and 977663.

IV.

The appeal of Cause No. 977662 is now pending in the Eleventh Court of Appeals as Appellate Case No. 11-05-00018-CR (transferred by this Court from the Fourteenth Court of Appeals bearing the original Appellate Case No. 14-04-01230-CR).

V.

The trial court certified Cause No. 977663 for appeal on February 25, 2005, and appointed attorney Alex G. Azzo, counsel for MOVANT in the appeal of that cause. On March 31, 2005, the Eleventh Court of Appeals granted MOVANT's motion to abate Appellate Case No. 11-05-00018-CR until May 16, 2005. A copy of the Order of the Eleventh Court of Appeals is attached hereto as Exhibit "A".

VI.

Texas Gov' t Code §73.001 specifically authorizes the Supreme Court of Texas to order cases transferred from one court of appeals to another at any time that, in the opinion of the Supreme Court, there is good cause for the transfer.

VII.

MOVANT therefore moves this Court to transfer Appellate Case 14-05-00355-CR, the appeal of Cause No. 977663, to the Eleventh Court of Appeals, Eastland, Texas, where the Companion Case 11-05-00018-CR is pending. As set forth above, both Cause Nos. 977662 and 977663 arose from the same transaction and the cases were tried together on December 6, 2004. In the interest of fairness and judicial economy, MOVANT requests that all challenges to the judgments rendered against him in Cause Nos. 977662 and 977663 in the 185th Judicial District Court be heard together in one appellate proceeding.

WHEREFORE PREMISES CONSIDERED, MOVANT requests that the Supreme Court of Texas transfer the appeal of Cause No. 977663 (Appellate Case No. 14-05-00355-CR) to the 11th Court of Appeals, Eastland, Texas, where the Companion Case 11-05-00018-CR is presently pending.


Respectfully submitted

By: 

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Bar No. 01475500
713/461-3772
713/552-0476 (fax)
Attorney for Movant
MOVANT

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred on April 13, 2005, on the above Motion for Transfer under Tex. Gov't Code § 73.001 with Bill Delmore, Harris County District Attorney and Counsel for the State of Texas and that Counsel for the State of Texas does not oppose this motion.


Alex G. Azzo

CERTIFICATE OF SERVICE

A true and correct copy of the Movant's Motion for Transfer under Tex. Gov't Code § 73.001 has been hand delivered to the Fourteenth Court of Appeals and the Harris County District Attorney, Appellate Division, 1201 Franklin, 6th Floor, Houston, Texas 77002 (via drop box) and by certified mail, return receipt requested to the Eleventh Court of Appeals, 100 West Main Street, P. O. Box 271, Eastland, Texas 76448 on the 14th day of April, 2005.



Alex G. Azzo

11th Court of Appeals

Eastland, Texas

Order

Timothy Lynn Hall

Appellant

Vs. No. 11-05-00018-CR -- Appeal from Harris County

State of Texas

Appellee

Timothy Lynn Hall has filed in this court a motion to abate this appeal pending the appointment of counsel in a companion case. The motion is granted.

Counsel is directed to inform this court of the status of the appeal in the companion case, Trial Court Cause No. 977663. Counsel has expressed concern that both this appeal and the appeal in the companion case should be handled by the same appellate court. This court directs counsel's attention to the case of *Miles v. Ford Motor Company*, 914 S.W.2d 135 (Tex.1995).

The appeal is abated until May 16, 2005.

PER CURIAM

March 31, 2005

Do not publish. See TEX.R.APP.P. 47.2(b).

Panel consists of: Arnot, C.J., and
Wright, J., and McCall, J.

EXHIBIT

A