

MEMORANDUM IN SUPPORT OF
INDIVIDUAL COMPLAINT TO THE
WORKING GROUP ON ARBITRARY DETENTION

TO THE WORKING GROUP ON ARBITRARY DETENTION:

NOW COMES, **Scott Ash James Zirus** (DOB: 6th April 1984), an Australian National wrongfully and arbitrarily detained by the State of Texas, United States, and acting Pro Se respectfully submits this individual complaint asserting that his detention in the United States is arbitrary in that the basis of the deprivation of liberty is in violation of the U.S. Constitution and relevant domestic laws; as well as a violation of Articles 7 through 11 of the Universal Declaration of Human Rights and Articles 9 and 14 of the International Covenant on Civil and Political Rights. In support thereof, Zirus presents the following:

I.
CLAIMS

Zirus asserts that he is arbitrarily deprived of his liberty for the following reasons:-

1. Zirus is actually INNOCENT of the crime for which he is arbitrarily detained in a foreign prison;
2. Zirus was illegally interrogated after he invoked his right to counsel before a Magistrate Judge in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution; and the U.S. Supreme Court precedents of Edwards v. Arizona, 101 S.Ct 1880 (1981) [EDWARDS RULE] and Miranda v. Arizona, 384 U.S. 436 (1966). This illegal interrogation resulted in a false confession;
3. Zirus was denied his constitutional right to effective assistance of trial counsel as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution by counsels failure to adequately and meaningfully challenge the admissibility of Zirus' illegally obtained false confession. As a result of this ineffective assistance of trial counsel the trial court held that Zirus' statement could be used against him if he exercised his right to trial;
4. Zirus was denied his constitutional right to effective assistance of trial counsel as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution by counsels misadvice about parole eligibility in his decision to enter into a plea agreement with the prosecution. Counsels misadvice resulted in Zirus pleading guilty to a 40 year sentence without the possibility of parole.

5. Zirus' insincere plea of guilty was involuntary in violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution because it was the result of ineffective assistance of trial counsel as presented in Claims 3 and 4. By being induced to plead guilty due to ineffective assistance of trial counsel, Zirus waived not only a judicial proceeding that he was otherwise entitled (a trial by jury), but he also waived other rights such as the right to confront his accusers, the right to hold the State to their burden of proof, and the right to direct appeal (among a myriad of other constitutionally recognized rights);
6. Article VI, Sec. 2, and the Fourteenth Amendment to the U.S. Constitution was violated by Texas authorities failure to inform Zirus "without delay" of his right to contact the Australian Consulate prior to his illegal interrogation as required by Article 36 of the Vienna Convention on Consular Relations. Had the Australian Consulate been contacted without delay they would have assisted Zirus in understanding his asserted rights and provided much needed oversight to ensure his rights were respected and honoured by Texas authorities; and,
7. Zirus was arbitrarily deprived a meaningful and effectual review of his conviction and sentence during his Habeas Corpus application because he was denied the assistance of Habeas counsel and his application was denied without the constitutionally prescribed quorum of judges. Zirus asserts that being deprived of a meaningful and effectual remedy to cure the violations of his fundamental and constitutional rights renders his detention arbitrary in violation of Article 9 and 14 of the International Covenant on Civil and Political Rights, and Article 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights.

II. BACKGROUND

- The Arrest and Conviction -

Scott Zirus is an Australian National wrongfully and unlawfully confined by the State of Texas, United States, for a crime which he is actually innocent.

On 16th May 2009, Zirus arrived in the United States from Australia on a J1 Visa as part of a 4-month international exchange program facilitated by the American Institute for Foreign Studies to work as a camp counselor at Camp Stewart for Boys (summer camp) in Hunt, Texas, for the U.S. summer of 2009.

On 20th August 2009, after the conclusion of camp, Zirus was arrested at the San Antonio International Airport by Officer Jeff McCoy of the Kerr County Sheriffs Office for alleged indecency with a camper. Zirus was transported by McCoy to the San Antonio Police Department where Zirus was promptly brought before a Bexar County Magistrate Judge. During the magistration hearing Zirus affirmatively requested an attorney. The Magistrate Judge documented this request on the Magistration paperwork in two separate places (see EXHIBIT A). The request recorded upon the paperwork states:

THE MAGISTRATE ASKED WHETHER THE PERSON WANTS TO REQUEST APPOINTED COUNSEL. THE ACCUSED DOES WANT TO REQUEST APPOINTED COUNSEL.

This unequivocal request for an attorney before the Magistrate Judge was a clear indication that Zirus did not feel competent dealing with Texas authorities without legal advice, and thus Zirus intended to exercise his Fifth Amendment privileges (To wit, right to remain silent; right to an attorney).

Despite this invocation, McCoy proceeded to transfer Zirus to Kerrville Texas (Kerr County), where McCoy initiated a series of interrogations of Zirus WITHOUT the requested counsel. McCoy did absolutely nothing to secure the attorney Zirus had requested. Zirus was also not informed of his rights under the Vienna Convention to have assistance from the Australian Consulate until after the interrogations were over.

Subsequently, under undue influence and the inherently coercive environment of interrogation, Zirus gave an untrue yet inculpatory statement and signed a confession which McCoy handwrote. As will be explained in more detail in this complaint, as a matter of U.S. Law, this interrogation was illegal and constitutionally prohibited under Miranda and Edwards Rule.

On the 4th September 2009, Zirus was finally appointed James W. Patterson (now deceased) and Clay B. Steadman as court-appointed counsel. Zirus was given a 'No Bond' for violation of his Visa and denied release on bail. Zirus remained detained in the Kerr County Jail.

On 5th October 2009, Zirus was indicted by the 198th Judicial District Court, Kerr County, Texas, for:

Cause No. B09-490

- Indecency with a Child by Contact [Texas Penal Code 21.11(a)(1)]

Cause No. B09-552

- Two Counts of Aggravated Sexual Assault of a Child [Texas Penal Code 22.021(a)(2)(B)]

Cause No. B09-553

- Continuous Sexual Abuse of a Child [Texas Penal Code 21.02]

On the 5th February 2010, a pre-trial hearing was held to consider Zirus' counsels "Motion To Supress" to determine whether Zirus' false confession would be admissible against him at trial.

Zirus' court-appointed counsel failed to present the Magistration Paperwork (EXHIBIT A); raise an argument under EDWARDS RULE; nor question McCoy along the same lines as in his 2012 deposition (See EXHIBIT B).

Consequently, the Court denied the Motion and held that Zirus' so-called confession could be used to convict him if he exercised his right to trial.

On the 16th April 2010, after incessant pressure from counsel, Zirus entered an insincere plea of guilty upon the advice of counsel on the premise that "confessions" (whether true or false) carry significant weight at trial. As such, a conviction and an excessive sentence (probably multiple LIFE sentences) were inevitable.

Zirus was sentenced as per a plea agreement with the prosecutor (DA Amos L. Barton) on the 27th April 2010. Zirus was sentenced to 20 years on the Indecency charge (B09-490); 40 years on each count of the Aggravated Sexual Assault (B09-552); and 40 years on the Continuous charge (B09-553). Each conviction was to run concurrently. Zirus was lead to believe by both counsel and the prosecutor that under this plea agreement he would be eligible for release on parole after serving half his sentence (To wit: 20 years).

As will be explained in more detail in this Complaint, this was untrue. Due to the Continuous charge, Zirus was inedigible for parole and would be required to serve the 40 years day-for-day.

On 20th August 2012, Zirus submitted his first Application for Writ of Habeas Corpus pursuant to Texas Code of Criminal Procedure, article 11.07 [See, WR-78,395-01; WR-78,395-02; WR-78,395-03].

In this Habeas application Zirus alleged that his guilty pleas were not voluntary, his trial counsel was ineffective, his guilty pleas were not supported by any evidence, and the proceedings lacked due process because of pretrial publicity.

On 10th October 2012 the Texas Court of Criminal Appeals ordered the trial court to make "Findings of Fact and Conclusions of Law" regarding Zirus' claims. An affidavit of Amos L. Barton (District Attorney/Prosecutor) was filed on 24th October 2012. An affidavit of James W. Patterson (court appointed counsel) was filed on 25th October 2012, and an affidavit of Clay B. Steadman (appointed co-counsel) was filed on 21st December 2012. Zirus did NOT receive a copy of any of these affidavits despite his 14th November 2012 "Motion To Request Opportunity To Respond To Trial Counsel's Affidavit". In this Motion Zirus requested "that a copy of the trial counsels affidavit be forwarded to Applicant [Zirus] and that he have the opportunity to respond to it with additional information, evidence and arguments, in order to assist the trial court in its supplemental findings of fact and conclusions of law". This Motion was ignored.

After Zirus' conviction, the families of his accusers brought a series of multi-million dollar lawsuits against him, AIFS, and Camp Stewart. Zirus was able to secure a Pro Bono attorney to represent him in these suits.

On 10th July 2012, as part of Discovery for these lawsuits, Zirus' civil attorney deposed Officer Jeff McCoy. McCoy unequivocally testified under oath to facts that establish that Zirus' inculpatory statement was obtained in violation of EDWARDS RULE (See, EXHIBIT B).

On 18th December 2012, Zirus received a copy of McCoy's Deposition from his civil attorney.

On 3rd January 2013, because McCoy's Deposition was critical to Zirus' Habeas application in terms of proving his so-called confession was unlawfully obtained in violation of his invoked right to counsel, Zirus sent a Supplemental Writ of Habeas Corpus Application adding McCoy's Deposition to support his ineffective assistance of trial counsel and suppression claims, and added a claim that he should receive an out-of-time direct appeal of the denial of his pretrial Motion To Suppress.

In the Supplemental Memorandum, Zirus specifically requested that the Court take JUDICIAL NOTICE of McCoy's Deposition pursuant to Texas Rules of Evidence 201(d). He explained that this deposition was not available at the time Zirus submitted his original Habeas Application because it had yet to be transcribed to writing.

On the same day (3rd January 2013), the Trial Court filed its Finding of Fact and Conclusions of Law without considering McCoy's Deposition, the claim concerning the out-of-time direct appeal, or allowing Zirus an opportunity to respond to trial counsel's affidavits.

The Supplemental Record was received by the Texas Court of Criminal Appeals on 7th January 2013, and Zirus received a copy of the trial courts 'Findings of Fact and Conclusions of Law' on the 11th January 2013. Zirus realized that McCoy's Deposition had NOT been considered and resent the Supplemental Writ Application via certified mail (Cert No. 7001 2510 0003 1040 4066) to the Trial Court on 15th January 2013, and sent the same via certified mail (Cert No. 7001 2510 0002 9229 6697) to the Texas Court of Criminal Appeals on 16th January 2013.

On 8th April 2013, Zirus sent a letter addressed openly to the Texas Court of Criminal Appeals again raising the issues concerning McCoy's Deposition and the fact that the trial court "did not address the evidence and issues raised in that Supplemental Writ. This needs to be done so that the Court of Criminal Appeals has all relevant and necessary facts at hand".

On 17th April 2013, the Texas Court of Criminal Appeals DENIED Zirus' Habeas Corpus Application stating that he failed "to controvert counsel's statements with any credible evidence showing both deficient performance and resulting harm [NOTE: Zirus was not given an opportunity to controvert statements] ... This Court agrees with the trial court that both counsel were not deficient as Applicant alleged [NOTE: Trial Court did not consider McCoy's Deposition]. Applicant also fails to show that his confession to police was unlawfully obtained and it would have been suppressed if counsel had argued the suppression issue differently [NOTE: EDWARDS RULES and McCoy's Deposition] and the record shows that Applicant waived his right to appeal as part of his plea agreement with the State, so there could be no appeal of the trial court's denial of the suppression issue that were raised". See, Ex parte Zirus, 2013 WL 1655672.

On 23rd April 2013, Zirus filed a "Request For the Court Upon It's Own Motion To Reconsider En Banc", again pointing out that the trial court did not consider McCoy's Deposition. The Motion To Reconsider was denied by the Texas Court of Criminal Appeals on 7th May 2013.

On 23rd January 2014, Zirus filed a Pro Se federal Habeas Corpus pursuant to 28 U.S.C. 2254 in the US District Court for the Western District of Texas, San Antonio Division. See, Zirus v. Stephens, 5:14-CV-00154.

The petition was ultimately dismissed with prejudice on 28th April 2014 as untimely pursuant to 28 U.S.C. 2244(d) because Zirus failed to meet the arbitrary one-year statute of limitations created by the Antiterrorism and Effective Death Penalty Act (AEDPA).

However, the US District Court held the following in its Memorandum Opinion and Order (Doc. 10) establishing:

- * "Petitioner's request for legal representation was documented on the State Court records and clearly known to petitioner at the time petitioner made that request" (pg. 6)
- * "The record now before this Court clearly establishes petitioner was actually aware he invoked his right to counsel on August 20, 2009" (pg. 8)
- * "... his arresting officer would subsequently confirm in a civil deposition that petitioner did, in fact, invoke petitioners right to counsel at petitioners initial appearance" (pg. 10)
- * "[P]etitioner herein had actual, personal, knowledge of the factual predicate of his claim in this federal habeas corpus proceeding (i.e., that petitioner properly invoked his right to counsel prior to being questioned by law enforcement officials" (pg. 7)
- * "While petitioner may not have fully understood the legal implications of his actions when he invoked his right to counsel on August 20, 2009 in an appearance before the State Magistrate, petitioner was most assuredly aware he had requested appointment of counsel" (pg. 13)

The significant thing about this dismissal is that the ruling of the State and federal court directly conflict in their justification for denying Zirus relief. Essentially the State Court said: "No, your rights were not violated"; and the Federal Court said: "Yes, your rights were violated - But, we can't help you because you filed your petition too late".

Zirus petitioned the Fifth Circuit Court of Appeals for a Certificate of Appealability which was denied (Cause No. 14-50487).

He then petitioned the U.S. Supreme Court for a Writ of Certiorari which was also denied (Cause No. 14-9593).

- The Reclassification / No Parole -

Before accepting his insincere plea of guilty, Zirus was lead to believe by his counsel, the prosecutor, and media reports that he was eligible for parole after serving half his sentence (To wit: 20 years). This was not true.

On 6th September 2016, Zirus was "reclassified" by the Texas Department of Criminal Justice because he was ineligible for parole due to the Continuous charge (B09-553). See, Texas Government Code 508.145(a).

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This was the first time he became aware that he was not eligible for parole and must fully discharge the 40 year sentence.

On 9th February 2017, Zirus filed a successive Habeas Corpus Application pursuant to Texas Code of Criminal Procedure, Article 11.07 raising a parole misadvice claim under the precedent of Ex parte Moussazadeh, 361 S.W.3d 684 (Tex. Crim. App. 2012) [MOUSSAZADEH III]. See, Ex parte Zirus, WR-78,395-05; WR-78,395-06; WR-78,395-07.

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Zirus argued that his plea was involuntary and that he received ineffective assistance of trial counsel for the misadvice that he would be eligible for parole. Zirus asserted that he was prejudiced by counsels inadequate advice of parole eligibility because he was not fully informed as to the consequences of his plea, and never intended to sign for a 40 year FLAT - which was practically a LIFE sentence. Had Zirus known he was ineligible for parole he would not have plead guilty and would have insisted on taking all charges to trial.

Zirus argued that the "reclassification" constituted a new "factual basis" to overcome the procedural bar against successive habeas applications. The Court disagreed and on 26th July 2017 the Court dismissed Zirus' claim pursuant to Texas Code of Criminal Procedure, Article 11.07, Sec. 4, without ruling on the merits.

When the Court of Criminal Appeals originally decided MOUSSAZADEH III in 2012 the question was left open as to its retroactivity status. On 20th September 2017, the Texas Court of Criminal Appeals issued their decision in Ex parte Evans, 537 S.W.3d 109 (Tex. Crim. App. 2017).

In her concurring opinion in Evans, Judge Keller (with Judge Harvey joining), explained that "several factors weigh in favor of retroactivity" of MOUSSAZADEH III. The first being that "the rule in Moussazadeh III was once the old rule" and that "it seems more appropriate to accord retroactivity status to a new rule that once was the rule than to a new rule that is truly new". She concluded that "the combination of these factors is, in my judgment, sufficient to accord retroactive effect here".

Zirus argued in a Motion To Reconsider filed on 4th October 2018 that this constituted a new "legal basis" to overcome the procedural bar against successive Habeas Corpus Applications - however Judge Keller's opinion in Evans was dictum and the retroactive application of MOUSSAZADEH III remains ambiguous to this day.

Zirus' Motion To Reconsider remained pending for well over a year and was eventually refused without providing Zirus notice.

III. ARGUMENTS AND AUTHORITIES

- EDWARDS RULE / ILLEGAL INTERROGATION -

STANDARD OF REVIEW

In Miranda v. Arizona, 384 U.S. 436, 473 (1966), the U.S. Supreme Court said:

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At ~~that~~ time the individual must have the opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

The quoted language commands that, once a suspect indicates either a desire to remain silent or a desire for an attorney, all questioning must stop, at least until the suspect confers with an attorney.

Miranda created a rigid rule that an accused's request for an attorney is per se an invocation of Fifth Amendment rights, requiring that all interrogation cease. This rigid rule is based on an attorneys unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation. Once an accused person indicates that he or she is not competent to deal with the authorities without legal advice, Courts will closely examine any later choice to make a decision without counsel's presence. Therefore, although the accused may waive Miranda Rights and submit to interrogation, the U.S. Supreme Court has recognized that additional safeguards are necessary after an accused has exercised the right to counsel.

THE EDWARDS RULE: The U.S. Supreme Court established these safeguards in the case of Edwards v. Arizona, 101 S.Ct. 1880 (1981). The Court held:

[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, such as [the defendant], having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police. 101 S.Ct. at 1884-85.

The requirement that counsel be "made available" refers to more than an opportunity to consult with an attorney outside the interrogation room. In Minnick v. Mississippi, 111 S.Ct. 486 (1990), the U.S. Supreme Court held:

a fair reading of Edwards and subsequent cases demonstrate that we have interpreted the rule to bar police-initiated interrogation unless the accused has counsel with him at the time of questioning... [W]hen counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney.

The Minick Rule has no time limitation and is effective as long as the suspect remains in custody. Therefore, once a defendant invokes the right to counsel, the police are forever barred from initiating further custodial interrogation of the defendant unless defense counsel is present at the interview. Moreover, the Minnick Rule bars further police-initiated interrogation about unrelated charges unless counsel is present. Arizona v. Robertson, 108 S.Ct. 2093 (1988).

In summary, unless counsel is present, or unless the accused initiates further conversation, a waiver of Miranda Rights after invocation of the right to counsel is presumed involuntary. Incriminating statements obtained after such an involuntary waiver, regardless of their merit, will be suppressed. See, Martinez v. State, 127 S.W.3d 792 (Tex. Crim. App. 2004).

- McCOY'S DEPOSITION -

After Zirus' conviction his accusers families brought a series of multi-million dollar lawsuits against him, AIFS, and Camp Stewart. In total there were 8 lawsuits. Zirus' co-defendants jointly settled for over \$9.2 million, and all claims were DISMISSED against Zirus as "uncertain, indefinite, and incapable of being satisfactorily established" (See, 5:10-CV-1044, Doc. 317, pg. 3).

For the lawsuits Zirus secured the representation of a Pro Bono Civil Attorney. On 10th July 2012, as part of Discovery for the lawsuits, Zirus' civil attorney deposed Officer Jeff McCoy under oath. See, EXHIBIT B - McCOY'S DEPOSITION).

McCoy unequivocally testified to facts which establish that Zirus' inculpatory statement was obtained in violation of EDWARDS RULE.

In significant part, McCoy testified as follows:

- A) After Zirus' arrest, he was taken before a Bexar County Magistrate Judge (page 70, line 19-22)
- B) That Zirus invoked his right to an attorney during the Magistration Hearing (page 74, line 21 - page 75, line 8) [Cf. EXHIBIT A].
 - [Attorney Gibson referring to Magistrate Document]
 - Q. Okay. Well, take a look down there at the last -- you'll see down at the bottom there it says, you're remanded without bond or bond is set. You see that part?
 - A. [McCoy] Yes.
 - Q. Take a look at the sentence before that. Could you read that to the -- to the court?
 - A. The Magistrate asked whether the person wants to request appointed counsel. The accused does want to request appointed counsel.
 - Q. So he did request appointed counsel at the interview with the magistrate, correct?
 - A. With the magistrate, yes.
- C) McCoy was given a copy of the Magistrate Paperwork which he placed in his stack of papers (page 73, line 1-9)

- D) That McCoy initiated the interrogation, and that Zirus did NOT request to be interviewed (page 71, line 22 - page 72, line 8)
- Q. [GIBSON] And after they... after that appearance before the magistrate Mr. Zirus then was brought to Kerrville for interrogation, correct?
- A. [McCoy] He was brought to Kerrville for an interview, yes sir.
- Q. Okay. I didn't -- I didn't want to use a -- if I use a term like that wrong, correct me. He was brought here specifically for the purpose of you interviewing him, right?
- A. True.
- Q. Alright. Did he request to be interviewed?
- A. No.
- E) That Zirus was NOT provided the requested attorney during interrogation. (page 80, line 1-3)
- Q. [GIBSON] Just for the record, is it true he did not have counsel at the time of the interview, correct?
- A. [McCoy] True.
- F) That Zirus was under arrest / a prisoner during entire interrogation (page 72, line 20-25)
- G) That Zirus did NOT initiate the interrogation (page 72, line 3-8)
- H) That McCoy, although knowing about the Magistration Paperwork, made absolutely no attempt to get Zirus the attorney he requested (page 73, line 14 - page 74, line 7)
- Q. [GIBSON] Did you notify anybody at the district attorney's office in Kerrville about - of the existence of this form concerning his appearance before the magistrate?
- A. [McCoy] Yes.
- Q. When?
- A. After the interview.
- Q. Well, before the interview you did nothing with the form correct?
- A. No.
- Q. What did you do before the interview to notify the district attorney's office that Mr. Zirus had requested counsel be appointed him?
- A. Nothing.
- Q. Did you notify the district judge or the district judge's clerk?
- A. No.
- Q. Did you notify anyone?
- A. No.
- (page 75, line 9-23)
- Q. [GIBSON] Okay. Did the authorities take any action to obtain appointed counsel for Mr. Zirus before you began the interview process that day?
- A. [McCoy] No.
- Q. So basically Mr. Zirus at the hearing before the magistrate had requested counsel, but essentially nothing was done to obtain counsel before the interview began, correct?

- A. He did not request counsel with me.
Q. He did request counsel to the magistrate, right?
A. True.
Q. And nothing was done to obtain counsel for Mr. Zirus before the interview process began, correct?
A. True.

(page 77, line 7-12)

- Q. [GIBSON] Okay. Now -- so its true that you did not discuss with Zirus what, if anything, was being done to obtain appointed counsel for him that he had requested before the magistrate before you began the interview?
A. True.

- PAROLE MISADVICE -

Zirus' guilty pleas were based upon the misadvice and inadequate information from his court appointed counsel that by pleading guilty pursuant to a plea bargain he would be eligible for parole after serving half his sentence.

However, this was not true because Zirus was convicted of Continuous Sexual Abuse pursuant to Texas Penal Code 21.02 in cause number B09-553. According to Texas Government Code 508.145(a) Zirus is ineligible for release on parole due to his conviction under Texas Penal Code 21.02.

EXHIBITS D through S unequivocally establish that Zirus, his counsel, the State, the media, the complainant's father, the Australian Embassy and the Attorney General's Department were ALL under the implied belief that Zirus would be eligible for parole after serving half his sentence.

PLEA AGREEMENT INVALID

Zirus' plea agreement is invalid as there was clearly an implied agreement between him and the State that by entering into a guilty plea he would be eligible for parole. When parole eligibility is made an affirmative part or an essential element of a plea bargain, and that misunderstanding make the agreement impossible to fulfill the plea is involuntary. Ex parte Stephenson, 722 S.W.2d 426 (Tex. Crim. App. 1987).

As the State and Zirus misunderstood that the essential element of parole cannot be fulfilled because it is prohibited by statute, Zirus' plea bargain is unenforceable and the parties must be returned to their original positions. Ex parte Cox, 482 S.W.3d 112 (Tex. Crim. App. 2016).

The plea bargain in this case was a package deal. A reduced punishment of the Continuous charge was the consideration offered by the State to induce the promise of Zirus to plead guilty to his Aggravated Sexual Assault and Indecency charges. As Zirus had a viable defense at trial for all of these charges, he would have entered a plea of not guilty and instead insisted on going to trial had he known his sentence would be ineligible for parole.

INEFFECTIVE ASSISTANCE

In Hill v. Lockhart, 106 S.Ct. 366 (1985), the U.S. Supreme Court held that in a plea bargain context, a defendant seeking to establish ineffective assistance of counsel must demonstrate that:

- 1) that trial counsel's performance was deficient; and,
- 2) a "reasonable probability" that, but for the deficient performance, he would not have plead guilty and would have insisted on going to trial.

The Texas Court of Criminal Appeals has conclusively held that an attorney's misadvice and inadequate information concerning parole eligibility constitutes deficient performance. Ex parte Maussazadeh, 361 S.W.3d 684 (Tex. Crim. App. 2012).

In Miller v. State, 548 S.W.3d 497 (Tex. Crim. App. 2018), the Texas Court of Criminal Appeals held that "the likelihood of a better outcome from a waived or forfeited proceeding is NOT the correct prejudice standard on a claim of ineffective assistance of counsel because the Court cannot accord any presumption of reliability to judicial proceedings that never took place". See also, Roe v. Flores-Ortega, 528 U.S. 470, 483, 120 S.Ct. 1029 (2000); Smith v. Robbins, 578 U.S. 259, 120 S.Ct. 746 (2000).

Instead, "the correct measure of prejudice for an attorney's deficient performance that might have caused a defendant to waive a judicial proceeding is whether there is a reasonable probability that the defendant would have opted for the proceeding if his attorney had performed adequately" Miller, Id. See also, Lee v. U.S., 137 S.Ct. 1958 (2017).

To demonstrate prejudice, a defendant need only show a "reasonable probability". This has been defined as: "undermining confidence in the outcome to illustrate that counsel's performance caused the outcome of the proceeding to be unreliable or the proceeding to be fundamentally unfair" De Toro v. Quarterman, 498 F.3d 486,490 (5th Cir. 2007).

Likewise, the U.S. Supreme Court has explained that the "reasonable probability" standard is "not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for the error things would have been different" U.S. v. Dominguez-Benitas, 542 U.S. 74, 83, n. 9 (2004).

ZIRUS WOULD HAVE INSISTED ON TRIAL

Zirus was prejudiced by counsel's misadvice on parole eligibility because he was not fully informed as to the consequence of his plea, and never intended to agree to serve 40 years FLAT - which is practically a LIFE sentence.

Zirus strongly asserts that, but for the misadvice of counsel or the unenforceable promise by the State, he would not have accepted the plea bargain or plead guilty, and would have insisted on exercising his right to trial.

To support this, Zirus presents the prior denial of the exact same plea bargain. EXHIBIT C is a 14th April 2010 Report by the Australian Embassy that states:

"Mr. Zirus confirmed that he would not accept the plea bargain offered by the prosecution as it would require him to plead guilty as charged." The significant factor to take from EXHIBIT C is that despite the fact Zirus thought he was eligible for parole, he still rejected the States offer because "it would require him to plead guilty as charged".

So logic dictates that had Zirus actually known he would have been ineligible for parole, there would be absolutely no way he would have considered the plea offer and would have insisted on going to trial.

ADMISSION / OMISSION = INEFFECTIVE + INVOLUNTARY PLEA

It is well established in both Texas and U.S. Law that a plea of guilty cannot be voluntary and intelligently made if it is the result of ineffective assistance of counsel. See, Ex parte Moussazadeh, 361 S.W.3d 684 (Tex. Crim. App. 2012); Ex parte Harrington, 310 S.W.3d 452, 459 (Tex. Crim. App. 2010).

Zirus argues that "parole misadvice" can come in the form of both an admission or omission. Either counsel was ineffective for the admission of incorrect information (parole eligibility in 20 years), or the omission of pertinent information (not telling Zirus he would be ineligible for parole). In both cases Zirus did not have the necessary information to make an informed decision as to the actual consequence of accepting the plea bargain and pleading guilty.

PACKAGE DEAL

The plea bargain in this case was a "package deal". Each plea was related to, and conditioned on, the acceptance of the State's plea recommendation in the other counts and causes. Thus, the plea offer was an "all-or-nothing". See, Ex parte Cox, 482 S.W.3d 112 (Tex. Crim. App. 2016).

This is evident from the fact Zirus accepted the maximum 20-years for the Indecency charge. There would be no benefit in pleading guilty to such if it had not been related to, and conditioned on, the other counts and causes as part of a package deal.

Furthermore, all pleas were entered at the same time and are run concurrently - this would not be the case had the plea bargain not been an "all-or-nothing" package deal.

APPROPRIATE REMEDY SHOULD HAVE BEEN

When a defendant who has entered a negotiated plea of guilty challenges his conviction and is successful, the appropriate remedy (if possible) is specific performance of the plea. Ex parte Cox, 482 S.W.3d 112, n. 10 (Tex. Crim. App. 2016).

If specific performance is not available, then the appropriate remedy is withdrawal of the plea and returning the parties to the positions held before the plea agreement was made. *Id.*

In Zirus' case, specific performance is not available because Texas Government Code 508.145(a) does not statutorily permit parole eligibility for an offense under Texas Penal Code 21.02.

Because the plea bargain was a "package deal" and an implied part of the plea bargain cannot be fulfilled, the entire plea bargain is unenforceable and the parties must be returned to their original positions.

HAD ZIRUS HABEAS COUNSEL

The merits of this claim was never ruled upon because review was procedurally barred by Texas Code of Criminal Procedure, Article 11.07, Sec. 4 - which prohibit successive Habeas Corpus applications unless under certain situations.

Had Zirus been provided Habeas Counsel to assist in the filing of his initial Habeas Corpus application, a competent attorney would have recognized that Zirus was ineligible for parole and raised such claim on the initial Habeas Corpus application. As such, the claim would have been reviewed on its merits and, if provided meaningful review, would have been granted and Zirus' conviction would have been overturned.

Instead, Zirus did not discover the parole misadvice until TDCJ reclassified him in September 2016. By this time it was too late to raise a reviewable claim (unless the Texas Court of Criminal Appeals created a new "legal basis" to raise the claim by making a retroactivity analysis on MOUSSAZADEH III - but they have not).

- EVIDENCE OF PAROLE MISADVICE -

The evidence that Zirus was misinformed about his parole eligibility is absolutely overwhelming and is corroborated by various independent sources. In evaluating the merits of Zirus' parole misadvice claim, the following should be considered:

AUSTRALIAN EMBASSY RECORDS (EXHIBITS D and E)

On 19th April 2010, the Monday after accepting the plea bargain, Zirus was granted access to take a phonecall from the Australian Embassy in Washington, DC. In the Embassy Report from that phone call (EXHIBIT D) it states at Point 2 that:

Mr. Zirus confirmed that he accepted a plea bargain on Friday 16 April 2010 which would require him to serve a sentence of 40 years. Mr. Zirus indicated that he understood that in accepting the plea bargain he was pleading guilty to class 3 aggravated felony offenses which would require him to serve a minimum of 50 percent of the sentence prior to being eligible for parole.

This unequivocally shows that Zirus' understanding at the time of accepting the plea bargain was that he would be eligible for parole after serving half his sentence (20 years).

Logic dictates that had either attorney informed Zirus correctly that he was ineligible for parole because of the Continuous charge, he would have communicated this to the Australian Embassy during the phone call.

In a subsequent Embassy Report (EXHIBIT E) dated 28th April 2010 (the day after the Sentencing Hearing) it states:

Mr. Zirus stated that the plea bargain consisted of him serving concurrent sentences of a total of 40 years, with parole being possible after 20 years incarceration.

There should be no doubt that Zirus believed that he was eligible for parole by entering into this plea bargain.

LETTER TO JUDGE FROM CO-COUNSEL (EXHIBIT F)

On 10th July 2017, Attorney Clay B. Steadman signed a letter to Judge Rex Emerson of the 198th Judicial District Court, stating:

I do not recall ever discussing parole eligibility and release, with Mr. Zirus prior to the entry of his plea on April 16, 2010. In my review of the transcript of his plea hearing, I was very detailed on certain issues raised in connection to the plea proceeding, however, there was no mention regarding Mr. Zirus' parole eligibility.

[EXHIBIT F]

In this letter Steadman denied ever discussing parole eligibility with Zirus. Zirus avers that this failure constitutes ineffective assistance of trial counsel because Steadman had a legal duty to fully inform Zirus of the full consequences of his plea. Steadman admits in this letter that he did not do this.

The fact the transcript of Zirus' plea hearing is completely void of any mention as to parole eligibility, supports the contention that Steadman never discussed parole eligibility with Zirus. If Steadman had, he would have more than likely questioned Zirus about it during his thorough admonishment. Thus Steadman was ineffective for providing inadequate information to Zirus on parole eligibility.

OTHER SIGNIFICANT PEOPLE
WHO BELIEVED ZIRUS WAS PAROLE ELIGIBLE [EXHIBITS G, H, and I]

The belief about Zirus being parole eligible was not limited to Zirus - it extended to DA Amos Barton, the families, and even the civil attorney representing the families in the multi-million dollar lawsuits that followed Zirus' conviction.

Exhibit C is a 30th April 2010 News Article by the Australian Associated Press. In this article it states: (EXHIBIT G)

The [plea] deal of 40 years imprisonment, with the possibility of parole after 20 years... Mr [Amos] Barton said it would be up to the Texas Board of Pardons and Paroles to decide if Zirus would be released after 20 years.

This obviously shows that DA Amos Barton believed Zirus was eligible for release on parole. The article then goes on to state:

Zirus may have taken the 40-year plea deal with the hope of gaining release in 20 years, but the families say they will be present if he fronts the parole board in 2030 to ensure he does not win release and can't hurt another child. "We'll be at the parole hearing", a seven-year-old victim's mother said.

So not only did DA Amos Barton believe Zirus was eligible for parole, but according to this article, so did the families - even citing one mother vowing to be at the parole hearing in 2030.

Interestingly, this is not the only piece of evidence that shows that the families were just as misinformed as Zirus. In a Sworn Federal Deposition (EXHIBIT H) one of the fathers of the alleged victims in the Continuous charge, testified that he too believed Zirus was eligible for release in 20 years, not the entire 40 years. He states:

He gets out of jail when I'm 63 years old... He's doing 20 years in prison [EXHIBIT H, pages 95-96]

This father was born in December 1968 (see page 6 of EXHIBIT H). So 20 years into Zirus' 40 year sentence would render him 62 years old. Even though his son was one of the alleged victims in the Continuous charge, he was also convinced Zirus could be released prior to the discharge of the 40 years.

Lastly, the principle civil attorney representing the families for the multi-million dollar lawsuits, Mr. Michael Sawicki, indicated in a post on his 'Child Safety Law Blog' that:

He [Zirus] was convicted of aggravated sexual assault of a child, sexual contact with a child, and continuous sexual abuse of a child younger than 14, and will have to serve at least 20 years of his sentence until he is eligible for release [EXHIBIT I]

Clearly with so many other significant people also believing Zirus was eligible for release on parole, parole was undoubtedly an implied part of Zirus' plea bargain with the State.

AUSTRALIAN ATTORNEY-GENERAL'S DEPARTMENT (EXHIBIT J)

In a 15th December 2010 Unclassified Email from the federal Offenders Unit of the Australian Attorney-General's Department to the Western Australian Office of Public Prosecution (EXHIBIT J), it reports:

The offender [Zirus] pleaded guilty to all four charges as part of a plea agreement under which he received a sentence of 40 years imprisonment, with a non-parole period of 20 years.

[See, page 140 of EXHIBIT J]

MEDIA REPORTS (EXHIBITS G, K, L, M, N, O, P, Q, and R)

Media Reports published after Zirus' accepted the plea bargain are riddled with statements such as:

"Zirus is eligible for parole in 20 years"

See, EXHIBITS K, L, M, O.

Other statements concerning parole eligibility include:

- * He will be eligible for release in Texas after 20 years and will be immediately deported to Australia [EXHIBIT O]
- * The sentences will be served in Texas and he will be eligible for parole in 20 years [EXHIBIT Q]
- * The deal was 40 years imprisonment, with the possibility of parole after 20 years [EXHIBIT G]
- * Zirus will have to serve at least 20 years of his sentence until he is eligible for release [EXHIBIT R]

Zirus has presented 11 different media reports which all state that he is eligible for parole, but there are many more published - not one of them states that Zirus was ineligible for parole and must subsequently discharge his 40 year plea deal.

NO ADMONISHMENT ON THE RECORD (EXHIBIT S)

As observed by Attorney Steadman, there is absolutely no mention of parole in the transcripts of the Plea Hearing (Reporter's Record, Vol 4 of 5), or the Sentencing Hearing (Reporter's Record, Vol 5 of 5).

Furthermore, in the "Rejection of Plea Offer" [EXHIBIT S], attached to Steadman's 10th July 2017 letter, it explained that Zirus understood that the charge of Continuous Sexual Abuse carried a minimum sentence of 25 years but says nothing at all about the fact this charge would require Zirus to serve that sentence (and all those running concurrently) day-for-day.

CONCLUSION ON PAROLE MISADVICE

The bottom line is this: No matter how it is looked at, the evidence shows that Zirus was not properly informed of the fact that by accepting the plea bargain he would be ineligible for parole and would have to discharge his entire sentence day-for-day. Had Zirus known this, he would not have accepted the plea bargain and instead would have insisted on going to trial.

- VIENNA CONVENTION -

Article 36 of the 'Vienna Convention on Consular Relations' grants a foreign national whose been arrested, imprisoned or taken into custody, a right to contact their Consulate and requires the arresting government authorities to inform the individual of this rights "without delay". See, Vienna Convention on Consular Relations, art. 36(1)(b), Apr. 24, 1963, 21 U.S.T. 77, 100-101, 595 U.N.T.S. 261, 292 (ratified by the United States on Nov. 24, 1969); See also, Sierra v. State, 218 S.W.3d 85 (Tex. Crim. App. 2007); Bocha v. State, 16 S.W.3d 1, 13 (Tex. Crim. App. 2000); Maldonado v. State, 998 S.W.2d 239 (Tex. Crim. App. 1999).

Article VI, Sec. 2, of the U.S. Constitution is known as the Supremecy Clause. It states that "all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land".

Therefore, when the U.S. ratified the Vienna Convention on 24th November 1969, this treaty and all the legal obligations and individual rights it proclaimed, became part of the "Supreme Law of the Land". The Supremecy Clause makes the Vienna Convention applicable and binding to the State through the Fourteenth Amendment.

Unfortunately, no matter how sound this legal argument may be, it has not come to fruition in practice. The Texas Courts have held that the Vienna Convention is unenforceable and routinely ignore violations of their legal requirement to inform a detained foreign national "without delay" of the right to contact their Consulate.

The consequence of ignoring the Vienna Convention in Zirus' case is that, although he unequivocally invoked his right to counsel before the Magistrate Judge, he was unable to enforce that right and subsequently was subjected to an illegal interrogation that had far-reaching ramifications that resulted in his wrongful conviction for a crime he did not commit.

Had the Australian Consulate been contacted "without delay" it would not only have allowed Zirus to fully understand his asserted rights, but the Consulate would have provided much needed oversight of Zirus' situation after his arrest. There is no question that Zirus' asserted rights would have been respected and he would not have been illegally interrogated. The outcome of Zirus' criminal proceeding would have been very different.

IV.
DETENTION IS ARBITRARY

Zirus asserts that his detention is arbitrary not only because his conviction was obtained in violation of the U.S. Constitution, but also because there is no meaningful or effectual remedy to cure the violations of his rights. The refusal to recognize the right to Habeas Counsel and the Quorum of One work in tandem to deliberately deny Pro Se indigent prisoners like Zirus meaningful access to Habeas Corpus review. This renders his detention arbitrary.

The 'International Covenant on Civil and Political Rights' (ICCPR) guarantees that: "All persons shall be equal before the courts and tribunals" [see, ICCPR, art. 14.1] and that "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law" [see, ICCPR, art. 14.5].

The ICCPR also ensures "that any person whose rights or freedoms are herein recognized are violated have an effective remedy" [art. 2.3(a)] and "that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities" [art. 2.3(b)].

This fundamental Human Right is designed to protect liberty and is echoed by Article 7 and 8 of the Universal Declaration of Human Rights ["All are equal before the law"; "Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights guaranteed him by the Constitution or by law"].

It is evident from the structure, design and operation of the Texas appellate system, and the blatant disregard for due process and meaningful review in Zirus' case, that the Texas Habeas Corpus process is an ineffectual remedy that renders Zirus' detention arbitrary.

- RIGHT TO HABEAS COUNSEL -

The Writ of Habeas Corpus is essential to the protection of fundamental and constitutional rights - but in Texas, Habeas Corpus has been rendered a meaningless ritual for those unable to afford appellate counsel. This means that justice is equal only to that which a prisoner can afford.

The structure, design and operation of the Texas procedural system dictates that no indigent prisoner in Texas is entitled to the benefit of counsel in raising a claim of "Ineffective Assistance of Trial Counsel" (IATC). This is because Texas procedures make it virtually impossible to present an adequate claim of IATC on Direct Appeal. The Texas Court of Criminal Appeals has explicitly stated that as a general rule a prisoner should NOT raise an issue of IATC on Direct Appeal and that the exclusive and correct forum is Habeas Corpus.

However, by deliberately choosing to move IATC claims outside the Direct Appeal process where counsel is constitutionally guaranteed, Texas has significantly diminished a prisoners ability to file such claims. This is because a prisoner, unlearned in the science of the law, cannot be expected to possess the legal knowledge necessary to prepare thoughtful and meritorious Habeas Corpus applications. A prisoner may not only misapprehend the substantive details of Federal Constitutional Law, the prisoner is in no position to develop the evidential basis for a claim of IATC - which often turns on evidence outside the trial record. This is significant because in Habeas Corpus the burden is on the prisoner to allege and prove facts which, if true, entitle the prisoner to Habeas relief.

The U.S. Supreme Court has severely criticized the Texas appellate system as it relates to the necessity of Habeas Counsel in Texas. Yet the Texas Legislature has not even blinked after these holdings. See, Martinez v. Ryan, 132 S.Ct. 1309 (2012); Trevino v. Thaler, 133 S.Ct. 1911 (2013).

Significantly the U.S. Supreme Court held that Habeas Corpus is the "initial-review collateral proceeding" for IATC claims in Texas, and as such, the equivalent of a prisoners direct appeal as to such claims. See also, Ex parte Buck, 418 S.W.3d 98, 109 (Tex. Crim. App. 2013).

If a State does not appoint appellate counsel on a Direct Appeal, it would be deemed unconstitutional. It stands to reason that when an "initial-review collateral proceeding" (i.e. Habeas Corpus) is the equivalent of a prisoner Direct Appeal as to IATC, then it follows that it is necessary for the State to appoint appellate counsel for that appeal otherwise it would be unconstitutional. They are fundamentally the same in all but name.

The U.S. Supreme Court has further held that when counsel is not appointed for an "initial-review collateral proceeding" it raises "a significant risk of injustice". See, Martinez id, and Trevino, id.

Unfortunately, Texas prisoners like Zirus lack standing to challenge the very structure or design of the judicial system which deprives them of their liberty. The system is designed as a closed loop which only those wealthy enough to afford counsel can escape.

- QUORUM OF ONE -

The Texas Constitution governs the manner in which the Texas Court of Criminal Appeals must convene to decide its cases. It mandates that a quorum of judges decide whether Habeas Corpus relief should be denied - either a panel of THREE judges or by the en banc court. See, Tex. Const. art. V, §4.

However, as exposed in Ex parte Dawson, 509 S.W.3d 294 (Tex. Crim. App. 2016) the Texas Court of Criminal Appeals' internal administrative procedures effectively act as a standing order permitting an individual judge to act as a proxy for the quorum of judges on the basis of a pre-vote on a category of cases that are never actually seen by any judge other than the proxy judge.

In other words, rather than the constitutionally required quorum of three judges or the en banc court, the votes of all the required quorum are given to a single proxy judge who votes on their behalf. It is essentially a quorum of one.

Although a State has the right to decide how it reviews its habeas corpus applications, when the manner in which the review must be conducted is expressly prescribed by law (in this case the Texas Constitution), then due process and equal protection demand that review be meaningful, fair and adequate in accord with the prescribed law.

Since the Texas Constitution expressly states that Habeas Corpus review MUST be done by a panel of three judges or by the en banc court, the Texas Court of Criminal Appeals can not legally get around this requirement by appointing a proxy judge to act as a quorum of one - But they do.

To add insult to injury, every application for Habeas Corpus is reviewed by a "Writ Staff Attorney" who drafts memoranda analysing every claim a prisoner asserts. The single judge (for which the application is randomly appointed) bases their proxy vote on the Writ Staff Attorney's opinion in that Memoranda and their recommendation to deny relief.

In essence, the Writ Staff Attorney (who is unelected) is the one making the decision which Habeas Corpus applications receive relief and which ones are denied. Then the single proxy judge votes on behalf of the constitutional quorum.

It is beyond doubt that such a judicial facade that is depriving all Texas prisoners of meaningful and effectual review of their convictions and sentences. As such, for as long as this practice has been going on, Texas prisoners like Zirus have been denied full and fair adjudication of the merits of their Habeas Corpus applications.

V.
CONCLUSION

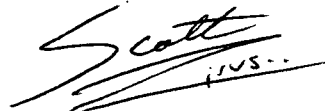
WHEREFORE, PREMISES CONSIDERED, Scott Ash James Zirus, asserts that his continued detention by the State of Texas, United States, is ARBITRARY in that the basis of the deprivation of liberty is in violation of the U.S. Constitution and relevant domestic laws; as well as a violation of Articles 7 through 11 of the Universal Declaration of Human Rights and Articles 9 and 14 of the International Covenant on Civil and Political Rights.

Zirus requests that the Working Group on Arbitrary Detention take swift action to assist the immediate release of Zirus into the authority and custody of the Commonwealth of Australia.

Zirus further prays for such other and further relief to which he may show himself justly entitled.

20th January 2023

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott Ash James Zirus". The signature is written in a cursive style with some loops and flourishes.

Scott Ash James Zirus

E X H I B I T

" A "

INTAKE #: 1354438

MAG NO. _____

CITY: _____

COURT NO: _____

COUNTY/STATE: KERR TX

WARRANT NO: 09-6047W

ASSIGN/CASE NO: _____

ARREST DATE: 20090820

ARREST TIME: 1116

THE STATE OF TEXAS
COUNTY OF BEXAR

MAGISTRATE WARNING

BEFORE ME ~~AND~~ **AUG 20 2009** UNDERSIGNED, MAGISTRATE OF BEXAR COUNTY, TEXAS, ON THE ____ DAY
OF _____, AT 1240 O'CLOCK A.M./P.M. AT THE MAGISTRATE COURT APPEARED
ZIRUS, SCOTT AT WHICH TIME I INFORMED THE ACCUSED OF THE CHARGE
INDECENCY W/CHILD SEXUAL CON, FILED AGAINST HIM/HER
AND OF ANY AFFIDAVIT, COMPLAINT, OR VERIFICATION OF A WARRANT FILED THEREWITH.

THE DEFENDANT WAS INFORMED:

1. OF HIS/HER RIGHT TO REMAIN SILENT;
2. OF HIS/HER RIGHT TO RETAIN COUNSEL;
3. OF HIS/HER RIGHT TO REQUEST THE APPOINTMENT OF COUNSEL IF HE/SHE IS INDIGENT AND CAN NOT AFFORD COUNSEL;
4. THAT HE/SHE WILL BE ALLOWED A REASONABLE TIME AND OPPORTUNITY FOR COUNSEL;
5. OF HIS/HER RIGHT TO HAVE AN ATTORNEY PRESENT DURING AN INTERVIEW WITH PEACE OFFICERS;
6. OF HIS/HER RIGHT TO TERMINATE AN INTERVIEW AT ANY TIME;
7. THAT HE/SHE IS NOT REQUIRED TO MAKE ANY STATEMENT;
8. THAT ANY STATEMENT MADE BY HIM/HER MAY BE USED AGAINST HIM/HER AT TRIAL AND IN COURT;
9. OF HIS/HER RIGHT TO HAVE AN EXAMINING TRIAL;
10. IF FROM A FOREIGN NATION, THE RIGHT TO ACCESS HIS/HER CONSULATE;
11. OF THE PROCEDURES FOR REQUESTING A COURT APPOINTED ATTORNEY
 - A. THAT AN APPLICATION NEEDS TO BE COMPLETED TO DETERMINE IF HE/SHE QUALIFIES FOR COURT APPOINTED COUNSEL;
 - B. THAT A CLERK WILL ASSIST HIM/HER IN FILLING OUT THE APPLICATION
 - C. THAT AN AFFIDAVIT NEEDS TO BE SIGNED;
 - D. THAT AN AFFIDAVIT IS A WRITTEN OR PRINTED DECLARATION OR STATEMENT OF FACTS MADE VOLUNTARILY AND CONFIRMED BY OATH BEFORE A PERSON HAVING AUTHORITY TO ADMINISTER SUCH OATH;
 - E. THAT HE/SHE MUST QUALIFY FOR COURT APPOINTED COUNSEL;
 - F. THAT IF HE/SHE MEETS INDIGENCE STANDARDS HE/SHE WILL QUALIFY FOR COURT APPOINTED COUNSEL;
 - G. UPON QUALIFICATION PRETRIAL SERVICES WILL PROVIDE THE NAME AND PHONE NUMBER OF THE ATTORNEY; AND
 - H. THAT COURT APPOINTED COUNSEL SHOULD CONTACT HIM/HER BY THE END OF THE FIRST WORKING DAY AFTER APPOINTMENT.

THE MAGISTRATE ASKED WHETHER THE PERSON WANTS TO REQUEST APPOINTED COUNSEL.
THE ACCUSED DOES DOES NOT WANT TO REQUEST COURT APPOINTED COUNSEL.

YOU ARE REMANDED WITHOUT BOND.

BOND SET: \$ 100000.00

WARNING RECEIVED, (THIS IS NOT AN ADMISSION OF GUILTY)

MAGISTRATE / DATE

Scott Zirus

ACCUSED / DATE

AUG 20 2009

AUG 20 2009

DD000062

INTAKE #: 1354438

COMMITMENT
IN MAGISTRATE COURT
MAG NO. _____

CITY: _____
COURT NO: _____
COUNTY/STATE: KERR TX
WARRANT NO: 09-6047W
ASSIGN/CASE NO: _____
TCKET/B-NUMBER: _____

THE STATE OF TEXAS
COUNTY OF BEXAR

TO THE SHERIFF OR ANY CONSTABLE OF BEXAR COUNTY - GREETINGS:
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:
YOU ARE HEREBY COMMANDED TO COMMIT TO THE JAIL OF YOUR COUNTY

ZIRUS, SCOTT CHARGED WITH
INDECENCY W/CHILD SEXUAL CON , A SECOND DEGREE FELONY,

HAVING FOUND PROBABLE CAUSE, I HEREBY COMMIT THIS PERSON AND ORDER YOU TO
SAFELY KEEP SAID PERSON TO ANSWER TO THE PROPER PRESIDING COURT.

SAID PERSON MAY BE RELEASED IF PERSON GIVES GOOD AND SUFFICIENT:

BOND GUIDELINE: \$10,000.00 TO \$20,000.00
 BOND AMOUNT ASSESSED AT \$ 100000.00;
OR
 FINE OF \$ _____ , LEVY OF \$ _____ AND ARST/WRT FEE OF \$ _____.

PERSON IS REMANDED WITHOUT BOND.

PERSON: _____

SIGNED THE _____ DAY OF _____, **AUG 20 2009**

SITTING AS A MAGISTRATE
IN BEXAR COUNTY, TEXAS

CURRENTLY EMPLOYED? YES NO
COURT APPOINTED ATTORNEY? YES NO

Note

*Commit to Jail
by Post Bond*

E X H I B I T

" B "

IN THE UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

C.W., INDIVIDUALLY, AND)(
AS NEXT FRIEND OF C.W.,)(
A MINOR,)(
)(
Plaintiff,)(
)(
VS.)(
)(
SCOTT ASH JAMES ZIRUS,)(
CAMP STEWART FOR BOYS,)(
INC. AMERICAN INSTITUTE)(
FOR FOREIGN STUDY, INC.)(
D/B/A CAMP AMERICA)(
)(
Defendants.)(
)(

S.M., INDIVIDUALLY, AND)(
J.M., INDIVIDUALLY AND AS)(
NEXT FRIEND OF L.M.,)(
A MINOR,)(
)(
Plaintiffs,)(
)(
VS.)(
)(
SCOTT ASH JAMES ZIRUS,)(
CAMP STEWART FOR BOYS,)(
INC. AMERICAN INSTITUTE)(
FOR FOREIGN STUDY, INC.)(
D/B/A CAMP AMERICA)(
)(
Defendants.)(
)(

SA-10-CA-1044-XR

S.A. 11-CV-645-XR

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MR. DUNNAHOO: Pass the witness.
EXAMINATION
BY MR. GIBSON:
Q. Officer, I'm Jerry Gibson. I represent Scott
Zirus in this case. I just have a few questions of
you. First I'd like to call -- go back in time to the
time when you arrested Mr. Zirus at the airport,
correct?
A. True.
Q. Okay. Now, at that time -- what time of day
was that when you arrested him, sir?

1 A. 10:45.
2 Q. And at that time, did you have him sign a
3 Miranda statement?
4 A. Yeah. He signed a -- yeah. He signed a
5 Miranda statement there shortly after he was arrested.
6 We walked him from -- where he was arrested he was
7 standing in line for -- to board and I've got a copy of
8 the Miranda that he signed.
9 Q. Could you pull that, please?
10 A. Sure.
11 Q. I'd like to make that as an exhibit. I've got
12 a Bates number on mine. I'm not sure that would help
13 you.
14 A. 10:45 a.m. is when he signed it.
15 Q. Could you hand that to the court reporter? I'd
16 like for her to mark that as the next exhibit, please,
17 sir.
18 (Exhibit No. 12 marked.)
19 Q. (BY MR. GIBSON) As I understand it, after he
20 was arrested in the airport he was taken to see a
21 magistrate in San Antonio?
22 A. Yes.
23 Q. And what happened at the magistrate's?
24 A. He was told of his -- why he was arrested and
25 the magistrate read him a document.

1 MR. GIBSON: All right. Let's ask the
2 reporter to mark this as an exhibit, please. Just for
3 the record, it's Bates 605.
4 (Exhibit No. 13 marked.)
5 Q. (BY MR. GIBSON) What number do we have there?
6 A. 13.
7 Q. Can you identify No. 13, please, sir?
8 A. Yes, sir.
9 Q. What is that?
10 A. It's the magistrate's warning, Bexar County.
11 Q. This is a record of the appearance before the
12 magistrate in San Antonio. Can you tell the court what
13 time of day it was?
14 A. 12:40.
15 Q. P.m.?
16 A. P.m.
17 Q. Okay. And does it bear Scott Zirus's
18 signature?
19 A. Yes.
20 Q. And the date is what?
21 A. August 20, 2009.
22 Q. And then after they -- after that appearance
23 before the magistrate Mr. Zirus then was brought to
24 Kerrville for interrogation, correct?
25 A. He was brought to Kerrville for an interview,

1 yes, sir.
2 Q. Okay. I didn't -- I didn't want to use a -- if
3 I use a term like that wrong, correct me. He was
4 brought here specifically for the purpose of you
5 interviewing him, right?
6 A. True.
7 Q. All right. Did he request to be interviewed?
8 A. No.
9 Q. Did he have any choice in going to the
10 interview room?
11 A. Did he have a choice?
12 Q. To go to the interview room?
13 A. Yes.
14 Q. Okay. What choice did he have?
15 A. He could have said no.
16 Q. Who took him to the interview room?
17 A. I did.
18 Q. Anybody with you?
19 A. No.
20 Q. Okay. And at that point he was a prisoner,
21 correct?
22 A. True.
23 Q. And he remained a prisoner during the entire
24 interview process?
25 A. True.

1 Q. Did you have with you at that time a copy of
2 the magistrate warning, which we've marked as an
3 exhibit?
4 A. Yes.
5 Q. Okay. What did you do with it prior to
6 interviewing Mr. Zirus?
7 A. Prior to?
8 Q. Yes, sir.
9 A. Kept it in my stack of papers I'm sure.
10 Q. Did you notify anybody at the district
11 attorney's office that he had been taken before a
12 magistrate and had signed a form?
13 A. Can you repeat that question?
14 Q. Did you notify anybody at the district
15 attorney's office in Kerrville about -- of the
16 existence of this form concerning his appearance before
17 the magistrate?
18 A. Yes.
19 Q. When?
20 A. After the interview.
21 Q. Well, before the interview you did nothing with
22 the form, correct?
23 A. No.
24 Q. What did you do before the interview to notify
25 the district attorney's office that Mr. Zirus had

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1 requested counsel be appointed for him?
2 A. Nothing.
3 Q. Did you notify the district judge or the
4 district judge's clerk?
5 A. No.
6 Q. Did you notify anybody?
7 A. No.
8 Q. But you knew that Mr. Zirus had, in fact,
9 requested counsel at the appearance before the
10 magistrate at 12:40 p.m., correct?
11 A. I did not know that.
12 Q. Well, take a look at the -- at the form that
13 you've identified again. What exhibit is that?
14 A. 12 - 13.
15 Q. All right, sir. Have you actually -- have you
16 ever read this form before this moment?
17 A. Yes.
18 Q. When?
19 A. I can't give you the exact date and time I read
20 it.
21 Q. Okay. Well, take a look down there at the
22 last -- you'll see down at the bottom there it says,
23 you're remanded without bond or bond is set. You see
24 that part?
25 A. Yes.

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1 Q. Take a look at the sentences before that.
2 Could you read that to the -- to the court?
3 A. The magistrate asked whether the person wants
4 to request appointed counsel. The accused does want to
5 request appointed counsel.
6 Q. So he did request appointed counsel at that
7 interview with the magistrate, correct?
8 A. With the magistrate, yes.
9 Q. Okay. Did the authorities take any action to
10 obtain appointed counsel for Mr. Zirus before you began
11 the interview process that day?
12 A. No.
13 Q. So basically Mr. Zirus at the hearing before
14 the magistrate had requested counsel, but essentially
15 nothing was done to obtain counsel before the interview
16 began, correct?
17 A. He did not request counsel with me.
18 Q. He did request counsel to the magistrate,
19 right?
20 A. True.
21 Q. And nothing was done to obtain counsel for
22 Mr. Zirus before the interview process began, correct?
23 A. True.
24 Q. I believe that there's another Miranda
25 statement in your file that's dated at 1405. Can you

Page 76

1 pull that, please, sir?
2 A. I have it.
3 Q. Okay. Could you turn that over to the court
4 reporter so she can mark that, please, sir?
5 A. (Witness complies.)
6 (Exhibit No. 14 marked.)
7 Q. (BY MR. GIBSON) And what is the exhibit number,
8 sir?
9 A. 14.
10 Q. Can you identify that document for the court,
11 please?
12 A. Yeah. It's Kerr County Sheriff's Office
13 Miranda warning and waiver form.
14 Q. And what is the date and time of that form?
15 A. August 20, 2009 at 2:05 p.m.
16 Q. When you presented this form to Mr. Zirus for
17 signature, did you discuss with him what the status was
18 of getting his appointed counsel?
19 A. I read him this form.
20 MR. GIBSON: Objection, nonresponsive.
21 Q. (BY MR. GIBSON) Did you discuss with Mr. Zirus
22 the status of his request for appointed counsel at the
23 time you presented this exhibit to him for signature?
24 A. His status?
25 Q. Yeah.

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1 A. Explain that.
2 Q. What was being done to get him appointed
3 counsel that he requested?
4 A. I read him this form.
5 Q. And that's all you did?
6 A. Yes.
7 Q. Okay. Now -- so it's true that you did not
8 discuss with Mr. Zirus what, if anything, was being
9 done to obtain appointed counsel for him that he had
10 requested before the magistrate before you began the
11 interview?
12 A. True.
13 Q. Now, if you'll look at the language on the form
14 under the area of waiver it says, do you understand
15 each of these rights I have read to you, correct?
16 A. True.
17 Q. And it's got an initial there --
18 A. True.
19 Q. -- correct?
20 A. Yes.
21 Q. And Mr. Zirus initialed that I -- I presume?
22 A. Yes.
23 Q. Okay. Does that mean he does or does not
24 understand it?
25 A. The question is, do you understand each of

1 these rights I have read to you? He put his initial
2 next to them, so I would say he understood.
3 Q. Well, does -- I don't mean to quibble with you,
4 but the form speaks for itself, but specifically the
5 form does not say whether he understood them or not.
6 It just says he's initialed that statement.
7 A. It says, do you understand.
8 Q. Yeah. And --
9 A. He put his initials, so I would say he
10 understood.
11 Q. Does that mean yes or no when he initials it?
12 A. I would say yes.
13 Q. Okay. How did he understand it?
14 A. Have to ask him.
15 Q. As I understand the file, you did at some point
16 contact the Australian consul?
17 A. Yes.
18 Q. When did you do that, sir?
19 A. I believe the day he was arrested, that day.
20 We called them and left a message on their phone.
21 Q. Was that before or after the interview process?
22 A. After.
23 Q. Did you understand at the time you began the
24 interview process with Mr. Zirus that the sixth
25 amendment of the United States Constitution guarantees

1 the defendant the right to have counsel present at all
2 credible stages of the criminal proceedings against him
3 including interrogation?
4 A. Requires?
5 Q. Yes, sir.
6 A. I'm unknown to that.
7 Q. Is it fair to say that you -- in your interview
8 of Mr. Zirus that you basically ignored the request for
9 appointed counsel as shown in the magistrate report?
10 A. No.
11 Q. What did you do then?
12 A. I read him the form, which is the standard
13 operating procedure of our department.
14 Q. But since you had just -- you just kept the
15 form in your file, really there was nothing anybody was
16 ever going to do at that point to get him appointed
17 counsel because the people that needed to know didn't
18 know he requested it, correct?
19 MR. SAWICKI: Objection, form.
20 A. I can't answer that question.
21 Q. How are appointed counsel appointed in
22 Kerrville?
23 A. I don't know.
24 Q. Who appoints them?
25 A. I don't know who appoints them.

1 Q. Just for the record, it is true he did not have
2 counsel at the time of the interview, correct?
3 A. True.

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Chronology – 14/04/2010 11:29:57 PM

Created by James Hazell (WH)

Summary:

WH639794L - On 14 April 2010 Mr Zirus confirmed that he would not accept the plea bargain offered by the prosecution as it would require him to plead guilty as charged. Mr Zirus advised that he is scheduled to appear at a pretrial hearing on Friday 16 April 2010 and then at the trial on 27 April 2010. We would be grateful if ConOps would please notify Ms Flemming of the above information.

Details:

On 14 April 2010 consular officer (Hazell) arranged for Mr Zirus to be brought to a telephone.

2. Mr Zirus confirmed that he would not accept the plea bargain offered by the prosecution as it would require him to plead guilty as charged. Mr Zirus stated that he had discussed in depth his plea bargain with his public defenders on Thursday 8 April 2010 and it was decided that they would submit a plea of not guilty to the court at the trial.
3. Mr Zirus advised that he is scheduled to appear at a pretrial hearing on Friday 16 April 2010 and then at the trial on 27 April 2010.
4. Mr Zirus stated that he provided his public defenders with statements describing the situation which surrounded the incidents in question and a further statement relating to when he provided a written statement to the Kerr County Sheriff's office.
5. Mr Zirus indicated that he was extremely stressed but otherwise coping well.
6. Mr Zirus stated that he had written letters to 60 Minutes Australia and a number of Western Australian newspapers clarifying their reports on his case.
7. CO Hazell advised Mr Zirus of the correspondence from Ms Shonagh Bradstock. Mr Zirus stated that he did not consent for information to be passed to Ms Bradstock but requested that she be referred to his foster mother, Ms Linda Flemming. Mr Zirus did clarify that Ms Bradstock was assisting the investigator whom his public defenders had obtained and requested that the investigators contact details be passed to her.
8. CO Hazell telephoned and left a message for Mr Clay Steadman, Mr Zirus' public defender, requesting that he provide the contact information for the investigator so their details may be passed to Ms Bradstock.
9. We would be grateful if ConOps would please notify Ms Flemming of the above information.

ONCE CLEARED TPS SHOULD BE EMAILED TO RELEVANT MEDIA AND POLICY
ADVISERS IN THE MINISTERS' OFFICES AND TO THE MEDIA LIAISON SECTION (-M-MLS-
Talking_Points)

DFAT - DECLASSIFIED

Case: 1111-F247

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E X H I B I T

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T : CONSULAR: CAT 1: ARREST: ZIRUS, Scott Ash James
MRN: WH639822L 19/04/2010 02:06:51 PM EDT
To: Canberra
Cc:
From: Washington
From File:
References: CE628175L, CE628174L
Response: Routine, Requires Action

~~CONSULAR-IN-CONFIDENCE~~

+++ Personal information about individuals contained in this cable should not be disclosed unless authorised under the Privacy Act 1988 (Cth). Any unauthorised disclosure of personal information may constitute a breach of the Privacy Act 1988 (Cth) +++

Comments:

To: CHCH/DFAT/CPD/CNB/CEC/s.22(1)(a)(ii)

--- Forwarded by CHCH/DFAT/CPD/CPB/Mauro Kolobaric ---

Tony

can you please arrange for NOK to be updated - however, we need to advise NOK that once we ascertain where A/N will serve his prison sentence, arrangements will need to be put in place for NOK to correspond direct with A/N, and vice-versa.

We need post to provide these details please

thanks

Mauro

Summary

On 19 April 2010 Mr Zirus confirmed that he accepted a plea-bargain on Friday 16 April 2010 which would require him to serve a 40 year sentence. We would be grateful if ConOps would please notify Mr Zirus' next-of-kin of the contents of the cable.

On 19 April 2010 consular officer (Hazell) arranged for Mr Zirus to be granted access to a telephone to receive a call from the Embassy.

2. Mr Zirus confirmed that he accepted a plea bargain on Friday 16 April 2010 which would require him to serve a sentence of 40 years. Mr Zirus indicated that he understood that in accepting the plea bargain he was pleading guilty to class 3 aggravated felony offences which would require him to serve a minimum of 50 percent of the sentence prior to being eligible for parole.

3. Mr Zirus stated that his plea bargain was awaiting approval from the Judge, however, he understood that the Judge would be speaking with the parents of those minors identified as victims in the case prior to approving it.

4. Mr Zirus stated that he had decided to accept the plea bargain after discussions with his public defenders. Mr Zirus advised that it was their understanding that the prosecution would likely succeed in finding him guilty on at least 1 count and that there was a possibility of him being found guilty on multiple counts if not all, which would see him serve up to 100 years. Mr Zirus advised that his public defenders believed that if found guilty of multiple counts that he would receive consecutive sentences as this was the outcome of a recent case which

We are very similar to his.

5. Mr Zirus advised that the District Attorney had verbally agreed to support his International Transfer of Prisoner Application (ITP). CO Hazell advised Mr Zirus that documentation relating to the ITP would be forwarded to him, however, he could not submit the application until he was situated at the facility where he would serve his sentence.

6. Mr Zirus stated that he was fine, however, was disappointed in himself for agreeing to the plea bargain as it saw him being required to plead guilty. Mr Zirus said that he had written a number of letters to his foster mother and friends mainly to explain the reasons for his accepting the plea bargain.

7. CO Hazell advised Administrator S.47F Kerr County Jail, that there was a possibility that Mr Zirus' next-of-kin may visit him in the near future. Administrator S.47F advised that if Mr Zirus' next-of-kin travelled to the US to visit him that their policy allowed for him to receive extended visiting hours due to the circumstances.

8. Administrator S.47F advised that she understood that Mr Zirus would not be transferred from Kerr County Jail until mid May at the earliest.

9. We would be grateful if Ms Linda Flemming, Mr Zirus' foster mother, be advised of the above information.

text ends

Sent by: James Hazell
 Prepared by: James Hazell
 Approved by:
 Topics: CONSULAR/Case Management

Canberra distribution

To: DFAT CPD Crisis Cntr, AS-CNB, CNB, CEC, AS-CPB, CPB

Cc: DFAT EXEC Secretary, Dep Sec Thomas, DepSec Bird, Dep Sec Kupa
 CPD FAS-CPD

Cc: OGOs PARLHSE Foreign Minister, Foreign Min Advisers, Foreign Min's Office

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Chronology – 19/04/2010 11:50:43 PM

Created by James Hazell (WH)

Summary:

WH639822L - On 19 April 2010 Mr Zirus confirmed that he accepted a plea bargain on Friday 16 April 2010 which would require him to serve a 40 year sentence. We would be grateful if ConOps would please notify Mr Zirus' next-of-kin of the contents of the cable.

Details:

On 19 April 2010 consular officer (Hazell) arranged for Mr Zirus to be granted access to a telephone to receive a call from the Embassy.

2. Mr Zirus confirmed that he accepted a plea bargain on Friday 16 April 2010 which would require him to serve a sentence of 40 years. Mr Zirus indicated that he understood that in accepting the plea bargain he was pleading guilty to class 3 aggravated felony offences which would require him to serve a minimum of 50 percent of the sentence prior to being eligible for parole.
3. Mr Zirus stated that his plea bargain was awaiting approval from the Judge, however, he understood that the Judge would be speaking with the parents of those minors identified as victims in the case prior to approving it.
4. Mr Zirus stated that he had decided to accept the plea bargain after discussions with his public defenders. Mr Zirus advised that it was their understanding that the prosecution would likely succeed in finding him guilty on at least 1 count and that there was a possibility of him being found guilty on multiple counts if not all, which would see him serve up to 100 years. Mr Zirus advised that his public defenders believed that if found guilty of multiple counts that he would receive consecutive sentences as this was the outcome of a recent case which was very similar to his.
5. Mr Zirus advised that the District Attorney had verbally agreed to support his International Transfer of Prisoner Application (ITP). CO Hazell advised Mr Zirus that documentation relating to the ITP would be forwarded to him, however, he could not submit the application until he was situated at the facility where he would serve his sentence.
6. Mr Zirus stated that he was fine, however, was disappointed in himself for agreeing to the plea bargain as it saw him being required to plead guilty. Mr Zirus said that he had written a number of letters to his foster mother and friends mainly to explain the reasons for his accepting the plea bargain.
7. CO Hazell advised Administrator S.47F Kerr County Jail S.47F that there was a possibility that Mr Zirus' next-of-kin may visit him in the near future. Administrator S.47F advised that if Mr Zirus' next-of-kin travelled to the US to visit him that their policy allowed for him to receive extended visiting hours due to the circumstances.
8. Administrator S.47F advised that she understood that Mr Zirus would not be transferred from Kerr County Jail until mid May at the earliest.
9. We would be grateful if Ms Linda Flemming, Mr Zirus' foster mother, be advised of the above information.

ONCE CLEARED TPS SHOULD BE EMAILED TO RELEVANT MEDIA AND POLICY ADVISERS IN THE MINISTER'S OFFICES AND TO THE MEDIA LIAISON SECTION (-M-MLS-Talking Points)

DFAT - DECLASSIFIED
Case: 1111-F247
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Chronology - 28/04/2010 04:28:22 AM

Created by James Hazell (WH)

Summary:

WH639887L - On 27 April 2010 Mr Zirus advised that he appeared in court for final sentencing and the reading of the Impact Statements by the victims families. Mr Zirus stated that the Judge agreed to the plea bargain which would see him being found guilty of 4 charges with a concurrent sentence of 40 years. Mr Zirus stated that there was media presence at his hearing. We would be grateful if ConOps would please update the talking points.

Details:

On 27 April 2010 consular officer (Hazell) telephoned the Kerr County Jail and arranged for Mr Zirus to be brought to a telephone.

2. Mr Zirus advised that he appeared in Kerr County Court today, 27 April 2010, for final sentencing and the reading of the Impact Statements by the victims families. Mr Zirus stated that the Judge agreed to the plea bargain which would see him being found guilty of 4 charges (2 counts of Aggravated Sexual Assault child, 1 count of Sexual Abuse of Child Continuous - Victim Under the age of 14, and 1 count of Indecency with a Child Sexual Contact). Mr Zirus stated that the plea bargain consisted of him serving concurrent sentences of a total of 40 years, with parole being possible after 20 years incarceration.
3. Mr Zirus stated that he thought he was coping better than expected with his sentencing proceedings.
4. CO Hazell advised Mr Zirus that the Embassy would forward him the International Transfer of Prisoner application documentation once he was located at his designated facility. Mr Zirus indicated that he understood from discussions with the facility staff that he would remain at the Kerr County Jail until mid May 2010.
5. Mr Zirus stated that there was media presence at his hearing. We would be grateful if ConOps would please update the talking points.
6. We would also be grateful if ConOps would please notify Ms Linda Flemming of the above.

ONCE CLEARED TPS SHOULD BE EMAILED TO RELEVANT MEDIA AND POLICY ADVISERS IN THE MINISTERS' OFFICES AND TO THE MEDIA LIAISON SECTION (-M-MLS-Talking_Points)

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Case: 1111-F247
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1982

E X H I B I T

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Law Offices of JESKO & STEADMAN

Elizabeth J. Jesko
Clay B. Steadman

612 Earl Garrett Street
Kerrville, Texas 78028

Telephone No. (830) 257-5005
Facsimile No. (830) 896-1563

July 10, 2017

Via Hand Delivery

Honorable M. Rex Emerson
198th Judicial District Court
Kerr County Courthouse
Kerrville, Texas 78029

FILED 7/12 2017
@ 10:47 AM
ROBBIN BURLEW
District Clerk, Kerr County, TX
By [Signature] Deputy

**Re: Cause No. B09-490; B09-552; B09-553
State of Texas vs. Scott Ash James Zirus
In the 198th Judicial District Court of Kerr County, Texas**

Dear Judge Emerson:

As per the Court's e-mail request, dated this date, I am enclosing the following documents regarding the plea offer concerning Scott Ash James Zirus and his then pending felony criminal cases:

1. Rejection of Plea Offer; and
2. Correspondence sent to Scott Ash James Zirus, dated August 26, 2013.

With regards to the Rejection of Plea Offer signed by Mr. Zirus, a copy of this document was sent to him along with several other documents as listed in the correspondence my office mailed to Mr. Zirus on August 26, 2013. The Rejection of Plea Offer is listed as number #9 on said correspondence.

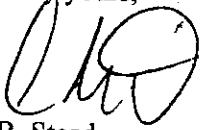
As I explained to Mr. Zirus and the Court, I was not lead counsel on these cases, but was court appointed to assist Mr. Patterson regarding these matters. I do not recall ever discussing parole eligibility and release, with Mr. Zirus prior to the entry of his plea on April 16, 2010. In my review of the transcript of his plea hearing, I was very detailed on certain issues raised in connection to the plea proceedings, however, there was no mention regarding Mr. Zirus' parole eligibility. While I do not recall speaking with Mr. Zirus regarding parole eligibility and release, I cannot speak to what Mr. Patterson and Mr. Zirus might have discussed when I was not present.

If you require additional documents, or any other information, or I need to provide an affidavit regarding same, please advise and I will prepare and forward same to you as soon as practicably possible.

Honorable M. Rex Emerson
July 10, 2017
Page 2

Should you have any questions or comments, please do not hesitate to contact my office.

Very truly yours,



Clay B. Steadman

CBS/dkg
Enclosures

cc: 12-3373

E X H I B I T
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Publisher: **AAP NewsWire**
 Publication: **aap International News (Fri 30 Apr 2010 8:52:19 AM)**
 Edition: **Both Cycles**

US: THE SECRET LIFE OF SCOTT ZIRUS AND HOW HE PREYED UPON TEXAN CHILDREN

By Peter Mitchell

KERRVILLE, Texas, April 29 AAP - Located among serene cypress trees and the Guadalupe River in the storied Hill Country of Texas, Camp Stewart for Boys has been the site of a picture-perfect rite of passage for generations of American youngsters.

The camp was founded in 1924 and is open to boys aged six to 16.

It is often the first time boys sleep away from home, kissing and hugging their parents goodbye and embarking on a three-week adventure where activities include canoeing, archery, wall climbing and rifle shooting.

Grandfathers who visited the camp as young boys swap their experiences with their sons and grandsons who also spent their summers at the camp.

The proud history of Camp Stewart for Boys, however, was tarnished last August after five parents arrived to pick up their six and seven-year-olds and noticed dramatic personality changes in the boys.

"Our son hardly talked to us," the mother of a seven-year-old boy, who will not be identified to protect her son's identity, told AAP.

"He was very standoffish."

The boy eventually revealed to his parents a story so horrifying they initially thought he made it up.

"My son was the first one to come out," his father said.

"Unfortunately we didn't believe it.

"He told us Scott had touched his penis."

Scott Zirus, arrived at Camp Stewart for Boys, about an hour's drive north of the Texas city of San Antonio and outside the rural town of Kerrville, with an impeccable resume.

The 26-year-old camp counsellor from Pinjarra, Western Australia, had run his own children's camp back in Australia, Grassroots Adventures, was a lover of the outdoors, told tales about the outback and played a didgeridoo.

"Our son thought the world of Scott," the mother of a six-year-old victim said.

What Camp Stewart and the parents did not know was Zirus was a pedophile who set out to groom the young boys and gain their trust.

He taught them to play the didgeridoo and to perform an Aboriginal "kangaroo hunt" dance.

He would be their friend.

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 Case: 1111-F247
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<http://newscentre.aap.com.au/artic>

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"Our son told us how Scott wouldn't make him eat things he didn't like and how he'd let him eat cookies," a mother of a seven-year-old victim said.

"Now we know Scott wanted him to like him and he was grooming the kids.

"He was taking advantage of six or seven-year-olds."

Just as he tricked the proprietors of Camp Stewart for Boys, Zirus also fooled the parents on the opening day of the camp.

The parents of a seven-year-old camp attendee recalled a long, warm chat with Zirus when they dropped their son off at the camp.

"We spoke to him for over an hour," the boy's mother said.

"Scott told us how he was going to teach our son how to tie his shoes and how he would be a really caring counsellor for him."

What Zirus didn't reveal to camp administrators were his bizarre views on life, including his self-proclaimed role as leader of the Shadoran movement. While he kept it secret from his Texan employer, a few minutes research on the internet revealed Zirus's views, including blogs linked to his MySpace page where, under the name "shadowsej", he announced it was "a fact that eight out of 10 boys are bisexual but only two out of these eight will ever admit it".

"I am a Shadoran and we have a special 'sexuality' called "neltia" this 'sexuality' is unique because it has no boundaries (sic)," Zirus wrote on the MySpace blog.

"You are open to love from ANY age, race or gender ... I will love whom ever I love."

In another posting, Zirus attempted to explain his philosophy, declaring that molesters "are sick and wrong", but there is a difference between people who find children "sexually attractive" and "molesters".

After the first boy revealed the assaults to his parents, Kerr County sheriffs launched an investigation. On August 20 last year, with Zirus at San Antonio airport preparing to leave Texas, he was arrested and charged with aggravated sexual assault of a child, indecency with a child and continuous sexual abuse of a child under 14 relating to three boys.

Five boys eventually came forward alleging they had been abused by Zirus and Kerr County District Attorney Amos Barton announced his desire to pursue the maximum penalty against the Australian - life in the Texas prison system.

Mr Barton used Zirus's internet rants as a key part of the case and with Zirus refused bail and held in the sex offenders unit at Kerr County jail ahead of his trial, authorities monitored his communications.

They discovered Zirus continued to reach out to others in the Shadoran movement.

"It is a philosophy that espouses a love for children that can include sexual love," Mr Barton said.

The district attorney said Zirus had confessed to one of the offences in interviews with authorities and believed Zirus created the Shadoran movement as a way to hide the fact he was a pedophile.

"If he puts it within a framework and gives it a title, then that somehow authorises him or justifies him in being miswired and offending small children," Mr Barton explained.

Zirus, despite his confession, appeared intent to fight the charges in court, but when a cellmate charged with unrelated sex offences was sentenced to 119 years jail after losing his trial, Zirus surprised prosecutors and his own lawyer, James Patterson, by deciding to accept a plea deal.

The deal was 40 years' imprisonment, with the possibility of parole after 20 years.

On Tuesday (April 27), after the parents of four of the victims used an open forum in the Kerr County District Court to tell Zirus the pain and devastation he had caused their children, Judge Melvin "Rex" Emerson confirmed the plea deal and sentenced Zirus to

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Case: 1111-F247
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the 40 years.

Mr Barton said it would be up to the Texas Board of Pardons and Paroles to decide if Zirus would be released after 20 years, but it was unlikely due to the "egregiousness" of the crimes and the fact there are multiple victims.

After the Texas charges were laid an investigation was launched in Western Australia resulting in four children claiming they were sexually abused by Zirus.

"No I wasn't surprised," Mr Barton said of the Australian charges.

"Given the nature of the outcry, given the nature of the confession, there's usually a progression a sex offender goes through that we see.

"There's a grooming process. There's a graduation to these types of offences."

What helped Zirus groom and then take advantage of the boys were the living arrangements at the camp, with Zirus and another counsellor sleeping in a cabin with the youngsters.

A grandmother of a seven-year-old victim said her grandson was assigned to a bunk above Zirus.

"The cabin was in an 'L' shape, so while there were others in the cabin, they could not see around the corner," the grandmother said.

The mother of a seven-year-old victim was sickened to hear what Zirus did to her son.

"Our son said 'He'd snuggle me in bed and rub his beard against me even though I didn't want him to and he told me he loved me'," the mother said.

All five boys are undergoing counselling and may have to continue the sessions for many years to come, with some of the boys exhibiting anxiety, fear of strangers and public places. One of the boys was a gifted student before going to the camp, but after being abused by Zirus he has become a shadow of himself, suffers from horrific nightmares and has talked about dying.

"He has said he wished he weren't alive and wished he could go to sleep and never wake up," the six-year-old's mother wrote in a victim's impact statement.

Zirus may have taken the 40-year plea deal with the hope of gaining release in 20 years, but the families say they will be present if he fronts the parole board in 2030 to ensure he does not win release and can't hurt another child.

"We'll be at the parole hearing," a seven-year-old victims' mother said.

AAP pm/it/apm

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E X H I B I T

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Transcript of the Testimony of
Brad Boozer

Date:

August 7, 2013

Case:

M.B. as next friend of J.B. v. Camp Stewart for Boys, et al

Kim Tindall and Associates, LLC

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Internet: www.kimtindallandassociates.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

M.B., AS NEXT FRIEND OF)
J.B., A MINOR,)
Plaintiffs)

VS.) NO. 5:12-cv-1133

CAMP STEWART FOR BOYS,)
INC., AMERICAN INSTITUTE)
FOR FOREIGN STUDY, INC.)
D/B/A CAMP AMERICA AND)
SCOTT ASH JAMES ZIRUS,)
Defendants)

ORAL DEPOSITION OF
BRAD BOOZER
AUGUST 7, 2013

ORAL DEPOSITION OF BRAD BOOZER, produced as a
witness at the instance of the Defendant Camp Stewart
for Boys, Inc., and duly sworn, was taken in the
above-styled and numbered cause on August 7, 2013, from
9:56 a.m. to 12:25 p.m., before Christi Sanford, CSR in
and for the State of Texas, Registered Professional
Reporter and Certified Realtime Reporter, reported by
machine shorthand, at the offices of Harrison, Davis,
Steakley, Morrison, PC, 5 Ritchie Road, Waco, Texas,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record.

1 APPEARANCES
 2 For the Plaintiffs:
 3 Mr. Zollie C. Steakley
 4 Harrison, Davis, Steakley, Morrison, PC
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 10 For the Defendant Camp Stewart for Boys, Inc.:
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For the Defendant Scott Ash James Zirus:
 Mr. Jerry A. Gibson (Telephonically)
 Plunkett & Gibson, Inc.
 70 NE Loop 410, Suite 1100
 San Antonio, Texas 78216
 (210) 734-7092
 (210) 734-0379 Fax
 gibsonj@plunkett-gibson.com

Also Present:
 Ms. Debra Brown

1 (All parties present have hereby waived the necessity of
 2 the reading of the statements by the court reporter as
 3 require by Rule 30(b)(5))
 4 BRAD BOOZER,
 5 having been first duly sworn, testified as follows:
 6 EXAMINATION
 7 BY MR. LOPEZ:
 8 Q. State your full name for the record.
 9 A. Michael Bradley Boozer.
 10 Q. Mr. Boozer, my name is Ralph Lopez. I know
 11 that you and I just met a minute ago. I am a lawyer for
 12 Camp Stewart for Boys, Inc., who is one of the parties
 13 that your wife has sued on behalf of your son. Do you
 14 understand who I am?
 15 A. Yes, sir.
 16 Q. There are other lawyers here today. One, of
 17 course, is your own lawyer defending you. And the woman
 18 to my left over here is Laura Slay, who represents our
 19 co-defendants, America's Institute for Foreign Studies
 20 doing business as Camp America. Do you understand who
 21 she is?
 22 A. Yes, sir.
 23 Q. And on the telephone representing a man named
 24 Scott James Ash Zirus is Jerry Gibson, a lawyer from
 25 San Antonio. All right?

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1 A. Got it.
 2 Q. We're going to be asking you some questions
 3 today about a matter that I know is very important to
 4 you and your wife and your family and may be upsetting
 5 sometimes because of the facts it inquires into. Do you
 6 understand that?
 7 A. Most definitely.
 8 Q. Okay. I want you to understand this, too.
 9 We're going to be asking a number of questions to try to
 10 draw out as much information from you as we can to
 11 inform, I guess, principally, the jurors who will sit in
 12 this case, but also other lawyers who are considering
 13 this case and even insurance adjusters who are involved
 14 in making decisions relevant to this case. Do you
 15 understand that?
 16 A. I do.
 17 Q. Because of that, we're going to be asking some
 18 questions that sometimes will be apparent what the
 19 reason is, but sometimes it won't be so apparent, and I
 20 want to ask you to just bear with me and be patient with
 21 me as we go through this process. It'll be over with in
 22 just a couple of hours. Okay?
 23 A. Got it.
 24 Q. If I ask any question that you don't
 25 understand, don't answer the question. Ask me to

Page 6

1 rephrase the question. Can we agree to that?
 2 A. I can.
 3 Q. Likewise, I and the other lawyers will press
 4 you for clarification of your answer if you give an
 5 answer that we don't quite understand. Okay?
 6 A. Got it.
 7 Q. What is your date of birth, sir?
 8 A. 12/31/68.
 9 Q. How old are you, then?
 10 A. 44.
 11 Q. What line of work are you in?
 12 A. I'm in the jewelry business.
 13 Q. How long have you been in the jewelry business?
 14 A. '91. My family's been in it since 1968. I
 15 came back from playing football in 1991 and got into
 16 business with them.
 17 Q. Okay. And what is the name of this business?
 18 A. Boozer's Premier Diamonds and Time Pieces.
 19 Q. Where is it located?
 20 A. Valley Mills Drive.
 21 Q. In what city?
 22 A. In Waco, Texas.
 23 Q. Is there only one location or is there more
 24 than one location?
 25 A. Just one.

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1 Q. Are you the owner of that business or just an
 2 employee?
 3 A. My wife is actually the owner of the business,
 4 and I work for my wife.
 5 Q. Your wife is Meredith Boozer; is that correct?
 6 A. Yes, sir.
 7 Q. All right. And your wife, as I understand it,
 8 is actually a colleague of mine and my associate's here.
 9 She's a lawyer; isn't that right?
 10 A. Unfortunately, yes.
 11 Q. Well, she's, I think, licensed in the state of
 12 Texas and actually practices law, to some extent; isn't
 13 that right?
 14 A. Yes.
 15 Q. All right. Since the family business was your
 16 family business, why does she own the business?
 17 A. Well, my family got out of the business and
 18 retired. And then when we opened the new business, for
 19 borrowing money and getting the business started, she
 20 had -- it was kind of all in her court.
 21 Q. Okay. Does she actually work for the business
 22 like you do or does she --
 23 A. No. She does not work day-to-day operations.
 24 Q. Okay. So she's the owner in name, but the
 25 day-to-day operations are something that you actually

Page 8

1 handle?
 2 A. Correct.
 3 Q. You and other employees, I guess?
 4 A. Correct.
 5 Q. Are you the boss?
 6 A. I mean, I pretty much run the day-to-day
 7 operations.
 8 Q. Okay. How long have you been married?
 9 A. Fifteen years two weeks ago.
 10 Q. And you and Mrs. Boozer have two children, to
 11 my understanding; is that right?
 12 A. Yes.
 13 Q. Who are your two children and what are their
 14 ages?
 15 A. John Jack Boozer is 12 and Jake Boozer is now
 16 10.
 17 Q. Okay. What's your education? Before you got
 18 into the jewelry business, what extent of education did
 19 you have?
 20 A. I went to college at Louisiana Tech and went to
 21 high school at Robinson High School here. And that's
 22 about it.
 23 Q. What year did you graduate college?
 24 A. I have not actually graduated. I'm six hours
 25 from graduation. I was six hours short and then I

Page 9

1 signed a contract with the Philadelphia Eagles to go
 2 play football, and I just have never got those last six
 3 hours.
 4 (Discussion off the record)
 5 Q. Well, that's pretty cool. How long did you
 6 play for the Eagles?
 7 A. I was only there a brief time. I played in
 8 five of the pre-season games.
 9 Q. What position?
 10 A. Punter.
 11 Q. Did you ever play the Dallas Cowboys?
 12 A. I did not.
 13 Q. All right. And I guess you played college
 14 football, too; is that right?
 15 A. Yes, at Louisiana Tech.
 16 Q. Okay. You did mention that.
 17 We're here today concerning allegations
 18 about things that we are told happened to your son at
 19 Camp Stewart in the year 2009 and then later in the year
 20 2012; is that correct?
 21 A. That is correct.
 22 Q. All right. Now, you and your wife don't
 23 actually have firsthand knowledge? And by that, you're
 24 not eyewitnesses to anything that happened to your son
 25 at the camp; is that correct?

1 this: If you'd focus on -- if you'd consider for a
2 moment the comparative responsibility between Scott
3 Zirus, Camp America and Camp Stewart, are you telling us
4 that you regard Camp America and Camp Stewart to be more
5 responsible for what Scott Zirus did --

6 MR. STEAKLEY: Objection, form.

7 A. 100 percent.

8 Q. (BY MR. LOPEZ) Let me finish. -- than Scott
9 Zirus himself?

10 MR. STEAKLEY: Objection, form.

11 A. 100 percent.

12 Q. (BY MR. LOPEZ) Who 100 percent?

13 A. Camp America and Camp Stewart are the first
14 lines of defenses to keep that guy out of the -- out of
15 the presence of young children.

16 Q. Do you think Scott Zirus has any responsibility
17 for what he did to your son?

18 MR. STEAKLEY: Objection, form.

19 A. He's definitely -- he's definitely got
20 responsibility.

21 Q. (BY MR. LOPEZ) What percentage? If it's
22 100 percent Camp America and Camp Stewart, are you
23 suggesting to the jury that, in your mind, Scott Zirus
24 has no responsibility for that action?

25 MR. STEAKLEY: Objection, form.

1 hasn't missed a beat. Camp Stewart hasn't missed a
2 beat. You guys are living and going and doing.

3 Y'all keep those people out of our camps.

4 You keep those people out of the country. You did not
5 do your job 100 percent. The kid should have never been
6 here. I'm not giving him a walk. He's doing 20 years
7 in prison. You put Camp Stewart and the three of those
8 in jail for 20 years, I'll drop the lawsuit today.

9 Q. Well, are you asking for that relief in your
10 lawsuit?

11 MR. STEAKLEY: Objection, form.

12 A. No, because you can't -- I don't think you can
13 ask for jail time.

14 Q. (BY MR. LOPEZ) The only thing you're asking
15 for in your lawsuit is money.

16 MR. STEAKLEY: Objection, form.

17 Q. (BY MR. LOPEZ) Are you aware of that?

18 A. If that impedes them and keeps them from keep
19 doing their business and that's the way the system
20 works, then that's the way the system works.

21 MS. SLAY: Objection, nonresponsive.

22 Q. (BY MR. LOPEZ) All right. So what amount of
23 money do you think would be, in total, fair compensation
24 for what happened to your son involving Scott Zirus?

25 MR. STEAKLEY: Objection, form.

1 A. He never should have been there.

2 Q. (BY MR. LOPEZ) So what degree of
3 responsibility does he have? He was there and he did
4 what he did.

5 MR. STEAKLEY: Objection, form.

6 Q. (BY MR. LOPEZ) What degree of responsibility
7 do you believe Scott Zirus has for what happened to your
8 son?

9 MR. STEAKLEY: Form.

10 A. I'm going to say one percent because he should
11 have never been able to get a visa to come from
12 Australia over here.

13 Q. (BY MR. LOPEZ) You would give him that much of
14 a walk? You would say he was only one percent
15 responsible --

16 MR. GIBSON: Objection, form.

17 Q. (BY MR. LOPEZ) -- for what he himself did to
18 your son --

19 MR. STEAKLEY: Objection, form.

20 Q. (BY MR. LOPEZ) -- even after he's admitted
21 doing it?

22 A. He gets out of jail when I'm 62 years old.
23 Meredith Ragsdale, Jeepers and Kathy are down there at
24 their camp making money, going on vacations, having a
25 good time, doing what they want to do. Camp America

1 A. I don't have a number.

2 Q. (BY MR. LOPEZ) Would you be content with
3 whatever the jury decides?

4 A. Yes.

5 Q. How about with regard to Dan Scothern? What
6 amount of money do you seek as fair compensation for
7 what you say Dan Scothern did to your son?

8 MR. STEAKLEY: Objection, form.

9 A. When the jury comes back with a verdict, that
10 will be what I'll be content with.

11 Q. (BY MR. LOPEZ) All right. So whatever your
12 lawyers ask for, you, in fact, will be content with
13 whatever the jury awards?

14 A. Yeah, because we're going to court.

15 Q. But this is my question: Whatever your lawyers
16 ask for, you and your wife will be content with whatever
17 the jury awards as compensation?

18 A. Can you explain? You're -- you're acting like
19 they're asking for something. Are you --

20 Q. They are asking for something. Let's say that
21 your lawyers, in the trial of this lawsuit --

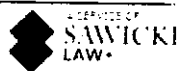
22 A. Okay.

23 Q. -- ask the jury for millions of dollars in
24 compensation for what happened to your son. Are you
25 with me so far?

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" I "

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Child Safety Law Blog

Monday, July 28, 2014

Scott Zirus - Abuser claims he is innocent despite confessions

This story from the West Australian caught my eye this week. It concerns the man who plead guilty to sexually molesting two boys at a Kerrville, Texas summer camp. We uncovered evidence that he molested several other boys. Police confiscated a lap top computer from the man when he was arrested and discovered it contained hundreds of child pornography pictures. We tried to depose him in the case but he refused to answer any questions citing his right against self-incrimination. Now serving a 40-year prison term, he has apparently started a Facebook page and a website claiming his innocence. Part of what concerns me is the ability of someone serving a prison sentence for sexually abusing children having access to the internet and Facebook. It seems like this would be a perfect avenue for a pedophile to gain access to children. The inherent problem with Facebook and the internet is that someone can pretend to be someone they are not and gain access to children. I'm not sure why a prison would allow someone like this to have internet access, but it reaffirms the advice to carefully monitor your child's on line activities.

Taken from The West Australian publication on July 3, 2014 -
A West Australian man serving a 40-year jail term in Texas for sexually abusing children at a summer camp has made a plea to Foreign Affairs Minister Julie Bishop to help his appeal against what he describes as his "wrongful and illegal incarceration". Scott Zirus, originally from Pinjarra, was jailed in the US in 2010 after accepting a plea deal over allegations he assaulted three boys while working at the Camp Stewart for Boys in Hunt, Texas, as part of an international exchange program.

He was convicted of aggravated sexual assault of a child, sexual contact with a child, and continuous sexual abuse of a child younger than 14, and will have to serve at least 20 years of his sentence until he is eligible for release. In a letter to The West Australian, Zirus revealed he intends to argue his innocence to the US Court of Appeals, claiming he was "illegally interrogated" by police before his confession.

And he is demanding Australia supply a US lawyer to oversee his case, a request sent to Ms Bishop's office last month.



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"The reason for this request is that consulate officials lack the requisite knowledge of constitutional and Federal appellate law to recognise an error," Zirus wrote.

Ms Bishop's office confirmed the Department of Foreign Affairs and Trade was monitoring Zirus' case.

"The embassy will continue to provide appropriate consular assistance to Mr Zirus," a department spokesman said.

Zirus claims that if he is not supplied a lawyer, Australia will be "failing its duty to affirmatively protect his rights".

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E X H I B I T

" J "



s.22(1)(a)(ii)"
 ov.au>@ag.g
 16/12/2010 08:33 AM

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To [redacted]@dfat.gov.au" [redacted]@dfat.gov.au>
 cc s.22(1)(a)(ii) s.22(1)(a)(ii)
 bcc

Subject Request for information about likely sentence [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s.22(1)(a)(ii)

The Western Australian Office of Public Prosecutions has considered my request for an approximate sentence and has asked for additional information. I understand that you may not be able to provide any additional information given the nature of the matter, but I thought I would ask you just in case.

The additional information sought by the WA OPP is set out in the email below.

I look forward to hearing from you.

Cheers

s.22(1)(a)(ii)

Federal Offenders Unit
 Attorney-General's Department
 3-5 National Circuit
 Barton ACT 2600
 Telephone: (02) 6141 2812
 Fax: (02) 6141 4204
 Email: [redacted]@ag.gov.au

From: [redacted]mailto:[redacted]@dpp.wa.gov.au] s.22(1)(a)(ii)
 Sent: Wednesday, 15 December 2010 6:33 PM
 To: s.22(1)(a)(ii)
 Cc: [redacted]
 Subject: TRIM: RE: Request for information about likely sentence

Dear s.22(1)(a)(ii)

Your below enquiry has been passed to the Appeals section of our office to assist with an approximation of the sentence the offender may have received for analogous offending in Western Australia.

I appreciate there may be issues pertaining to the classified nature of some information, but is it possible for our office to be provided with a short précis of the facts relating to each of the 4 charges?

Specifically the following details would assist greatly in providing a more accurate assessment of the possible WA sentence for the offender's behaviour:

1. Nature of the conduct in each offence (i.e. was it kissing, touching, forcing child to touch offender, masturbation of either child or offender)
2. Was there any fellatio either by offender on child or offender forcing child to fellate offender? Also, was there any digital penetration? I ask this because this conduct would be

classified as penetration under WA statutes but may not necessarily be classified as such under Texan statutes (which I am just about to look at).

3. Was there any physical force or violence, or threatened force/violence, or other threats involved in the conduct?
4. Was the offender in a position of trust toward the victims?
5. Where the offending involved repeated acts of sexual abuse against victims, for how long did the offending take place in each case?

s.22(1)(a)(ii)

I have copied [redacted] as your contact with this office, and also our Appeals Manager (Senior State Prosecutor [redacted] s.22(1)(a)(ii) as I will most likely pass my preliminary research and opinion to [redacted] for finalisation.

Kind regards,

s.22(1)(a)(ii)

s.22(1)(a)(ii)

[redacted] | State Prosecutor | Appeals s.22(1)(a)(ii)

Please note: [redacted] is in the office on Tuesdays and Wednesdays
Office of the Director of Public Prosecutions for Western Australia
Telephone 08 9425 3718 Facsimile 08 9425 3600
Level 1 International House, 26 St Georges Terrace PERTH WESTERN AUSTRALIA 6000
Email [redacted] @dpp.wa.gov.au s.22(1)(a)(ii)

From: s.22(1)(a)(ii) [redacted]
Sent: Wednesday, 15 December 2010 2:52 PM
To: s.22(1)(a)(ii) [redacted]
Cc: [redacted]
Subject: FW: Request for information about likely sentence [SEC=UNCLASSIFIED]

s.22(1)(a)(ii)

Legal Projects Officer
Office of the Director of Public Prosecutions
Level 1, 26 St Georges Terrace
PERTH WA 6000
Telephone: (08) 9425 3813
Fax: (08) 9425 3608
Email: s.22(1)(a)(ii) [redacted] @dpp.wa.gov.au

From: s.22(1)(a)(ii) [redacted] [mailto:s.22(1)(a)(ii)@ag.gov.au]
Sent: Wednesday, 15 December 2010 11:22 AM
To: s.22(1)(a)(ii) [redacted]
Subject: FW: Request for information about likely sentence [SEC=UNCLASSIFIED]

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Dear s.22(1)(a)(ii) [redacted]

Thank you for speaking with me earlier today about this matter.

The Commonwealth Attorney General's Department has been asked to provide advice on whether

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FOI No: 1303-F516 File Ref: 13/4532
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the Australian Government should support an amnesty for an Australian offender incarcerated overseas. To do this the government needs to ensure that individuals have served the equivalent of the term they would have served in Australia for the crimes they had committed minus one year (to allow time for in-country administrative processes). The offender in question is from Western Australia and would ordinarily have been charged with Western Australian offences.

I would be grateful if you would provide advice on an the equivalent sentence for this offender. The relevant information available to the Department is below.

The offender was convicted of the following offences:

1. AGGRAVATED SEXUAL ASSAULT CHILD
First Degree Felony
Texas Penal Code Statute 22.021(a)(2)(B)
<http://www.statutes.legis.state.tx.us/docs/pe/htm/pe.22.htm>
2. AGGRAVATED SEXUAL ASSAULT CHILD
First Degree Felony
Texas Penal Code Statute 22.021(a)(2)(B)
<http://www.statutes.legis.state.tx.us/docs/pe/htm/pe.22.htm>
3. SEX ABUSE OF CHILD CONTINUOUS: VICTIM UNDER 14:
Texas Penal Code Statute 21.02
First Degree Felony
<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.21.htm>
4. INDECENCY W/CHILD SEXUAL CONTACT
Second Degree Felony
Texas Penal Code Statute 21.11(a)(1)
<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.21.htm>

Extracts from the Texas Penal Code are attached.

The offender's name is Scott Zirus and he was 25 years of age at the time of the offences.

The victims were between the ages of 9 and 10 years.

The Department has been told that the circumstances of the offences did not involve sexual penetration and that the offender's acts 'would be closer aligned with the Western Australian Criminal Code definitions of "indecently dealing" and "sexual behaviour"'.

An aggravating feature of the first two offences was the continued abuse of the victims.

The offender did not provide any assistance to local law enforcement and no other individuals were arrested with him or named as accomplices. The offender has no prior criminal convictions in the United States.

The offender pleaded guilty to all four charges as part of a plea agreement under which he received a sentence of 40 years imprisonment, with a non-parole period of 20 years.

Please do not hesitate to contact me if you have any queries about my request or require any additional information.

Many thanks for your assistance. I look forward to hearing from you.

Cheers

s.22(1)(a)(ii)

Federal Offenders Unit
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600
Telephone: (02) 6141 2812
Fax: (02) 6141 4204
Email: s.22(1)(a)(ii)@ag.gov.au

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Edition: Both Cycles

US: AUST 'CHILD PREDATOR' AGREES TO SERVE 40 YEARS IN TEXAS JAIL

By Peter Mitchell

LOS ANGELES, April 16 AAP - An Australian camp counsellor labelled a "child predator" by US authorities has surprised Texas prosecutors by agreeing to serve 40 years in prison for sexually assaulting five young boys at a summer camp.

When Scott Zirus, 26, from Pinjarra, Western Australia, was led into court in Kerrville, Texas, on Friday he was expected to plead not guilty to the assaults, but in an about face that also surprised his lawyer, Zirus admitted his guilt and accepted a plea deal.

Just days ago Zirus rejected the 40-year plea deal.

Prosecutors had vowed to seek the maximum sentence under Texas law of life in jail if Zirus took the case to trial and forced his young victims, aged five and six-years-old, to testify in court.

"If we were going to go to trial Zirus would never see the free world again," Todd Burdick, an investigator in the Kerr County District Attorney's Office, told AAP.

Zirus' American lawyer James Patterson said the threat of a life sentence in the Texas prison system weighed heavily on Zirus.

"He had completely rejected the deal and I guess he just got to thinking about it and what the downside was and he decided to take it," Mr Patterson said.

Zirus is eligible for parole in 20 years.

Mr Burdick and other members of the prosecuting team believe a life sentence slapped on one of Zirus' cell mates persuaded Zirus to take the deal.

Zirus shares a cell in the Kerry County Jail with Alfredo Ramirez, a 27-year-old from Kerrville, who fought allegations of sexually assaulting 13 and 14-year-old girls, but lost the case and on Thursday was sentenced to 119 years' jail.

"I think that changed Mr Zirus' mind," Mr Burdick said of the Ramirez verdict.

"Zirus is in the same cell with him.

"All of the sex offenders have the same cell together."

Zirus was working at a boys camp in Hunt, Texas, as a counsellor last year under an international exchange program when the first young victims came forward with the allegations.

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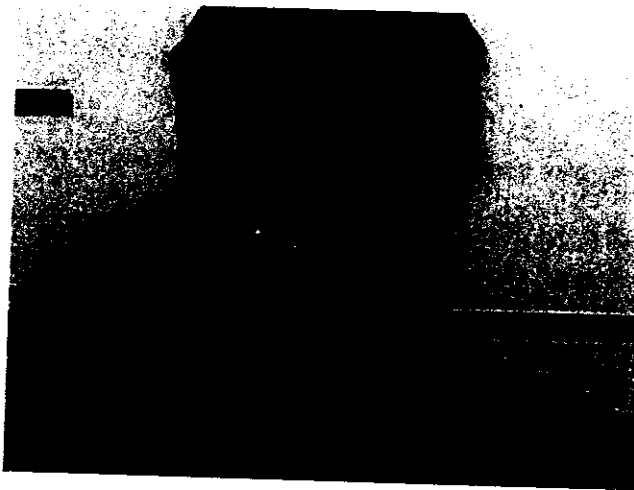
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Child predator Scott Zirus agrees to 40 years in Texan jail

- From: PerthNow
- April 18, 2010 12:12AM

4 retweet



Scott Zirus may have changed his mind after his cellmate received a 119-year sentence for child abuse / AP
Source: AP

- Child abuser accepts plea deal
- Surprises even his own lawyers
- Prosecutors threatened life sentence

A WEST Australian man charged with sexually assaulting five young boys at a summer camp in the US has surprised prosecutors and his own lawyers by agreeing to serve 40 years in prison for the crimes.

When Scott Zirus, 26, a Scout leader from Pinjarra, was led into court in Kerrville, Texas, on Friday it was expected he would plead not guilty to the assaults, but he admitted his guilt and accepted a plea deal he had only days before rejected.

Prosecutors had intended to seek the maximum sentence - life in jail - if Zirus took the case to trial and forced his young victims, aged five and six-years-old, to testify in court.

"If we were going to go to trial Zirus would never see the free world again," Todd Burdick, an investigator in the Kerr County District Attorney's Office, told AAP.

Zirus's American lawyer, James Patterson, said the threat of a life sentence in the Texas prison system weighed heavily on his client.

inside was and he decided to take it," Mr Patterson said.

Zirus will be eligible for parole in 20 years.

Mr Burdick and other members of the prosecuting team believe a life sentence slapped on one of Zirus's cellmates persuaded Zirus to take the deal.

Zirus shares a cell in the Kerry County Jail with Alfredo Ramirez, a 27-year-old from Kerrville, who fought allegations of sexually assaulting 13 and 14-year-old girls, but lost the case and on Thursday was sentenced to 119 years' jail.

"I think that changed Mr Zirus' mind," Mr Burdick said.

"Zirus is in the same cell with him. All of the sex offenders have the same cell together."

Zirus was working at a boys camp in Hunt, Texas, as a counsellor last year under an international exchange program when the first young victims came forward with the allegations.

Prosecutors originally charged Zirus with assaulting three boys, but five victims eventually came forward.

Zirus also ran a children's camp in West Australia and was involved in the Scout movement.

After Zirus's computer was examined by US authorities Kerr County Sheriff Rusty Hierholzer labelled Zirus a child predator and said Zirus may have Australian victims.

West Australian authorities began an investigation and interviewed 370 children who attended Australian camps involving Zirus. Four alleged victims came forward.

Mr Patterson said Zirus will apply to serve his Texas jail sentence in Australia, but the Kerr County DA's office says he will not be successful.

Mr Burdick said West Australian authorities will also have to wait until Zirus completes his sentence in Texas before he can be brought before the courts in Australia.

"They'll get a crack at him after he goes through the Texas penitentiary," Mr Burdick said.

The Texas victims and their families were relieved Zirus entered the guilty pleas and would never be allowed to be a free man in the US again.

When Zirus serves his time he will be immediately deported to Australia and banned from entering the US.

Zirus pled guilty in court on Friday to charges of aggravated sexual assault of a child, sexual contact with a child and continuous sexual abuse of a child under 14.

In Australia Zirus is accused of eight counts of indecent dealing with a child under 13, one count of procuring and inciting a child to do an indecent act and one count of indecently recording a child.

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Australian abused boys at US summer camp

PETER MITCHELL
April 18, 2010

Read later

LOS ANGELES: AN AUSTRALIAN youth counsellor labelled a "child predator" by US authorities surprised prosecutors by agreeing to serve 40 years in a Texas prison for sexually assaulting five boys at a summer camp.

When Scott Zirus, 28, from Pinjarra, Western Australia, was led into court in Texas on Friday, he was expected to plead not guilty to the assaults, but in an about-face, Zirus admitted his guilt and accepted a plea deal. Just days ago Zirus had rejected the 40-year plea deal.

Prosecutors had vowed to seek the maximum sentence - life in jail - if Zirus had taken the case to trial and forced his young victims, aged five and six, to testify in court.

"If we were going to go to trial Zirus would never see the free world again," Todd Burdick, an investigator in the Kerr County District Attorney's Office, said.

He will be eligible for parole in 20 years.

Zirus was working as a boys camp counsellor last year on an exchange program when the first of five victims came forward. He also ran a children's camp in Western Australia and was in the Scouts movement.

After Zirus's computer was examined by US authorities, Kerr County sheriff Rusty Hierholzer labelled Zirus a child predator and said he may have Australian victims.

Authorities have interviewed 370 children who attended Australian camps at which Zirus was working. Four alleged victims came forward.

Zirus will apply to serve his Texas jail sentence in Australia, but the Kerr County DA's office says he will not be successful. Mr Burdick said West Australian authorities would have to wait until Zirus completed his sentence in Texas before he could be brought to Australia.

"They'll get a crack at him after he goes through the Texas penitentiary," Mr Burdick said.

When Zirus serves his time he will be deported.

In Australia, he is accused of eight counts of indecently dealing with a child under 13, one count of procuring and inciting a child to do an indecent act and one count of indecently recording a child.

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AN Australian camp counsellor labelled a "child predator" by Texan authorities will serve 40 years in prison for sexually assaulting five young boys at a summer camp.

Yesterday, Scott Zirus, 26, from Pinjarra, Western Australia, admitted his guilt in a Kerrville court. Prosecutors had vowed to seek life in jail if Zirus went to trial and forced his young victims, aged five and six years, to testify in court.

Zirus was working at a boys' camp in Hunt, Texas, last year under an international exchange program when the first young victims came forward with the allegations.

Zirus also ran a camp in WA. Four alleged victims have since come forward.

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Australian camp worker abused boys

PETER MITCHELL

News; Pg. 20

The Sun Herald (Sydney, Australia)

April 18, 2010 Sunday

First Edition

AN AUSTRALIAN youth counsellor labelled a "child predator" by US authorities surprised prosecutors by agreeing to serve 40 years in a Texas prison for sexually assaulting five boys at a summer camp.

When Scott Zirus, 26, from Pinjarra, Western Australia, was led into court in Kerrville, Texas, on Friday, he was expected to plead not guilty to the assaults, but in an about-face, he admitted his guilt and accepted a plea deal.

Prosecutors had vowed to seek the maximum sentence under Texas law, life in jail, if Zirus had taken the case to trial and forced his young victims, aged five and six, to testify in court. He will be eligible for parole in 20 years.

Zirus was working at a camp as a counsellor last year on an exchange program when the first of five victims came forward.

He also ran a children's camp in Western Australia and was involved in the Scouts movement.

Authorities have interviewed 370 children who attended Australian camps at which Zirus was working. Four alleged victims came forward.

In Australia, he is accused of eight counts of indecently dealing with a child under 13, one count of procuring and inciting a child to do an indecent act and one count of indecently recording a child. Copyright 2010 John Fairfax Publications Pty Ltd

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Briefly - The West Australian

MAJ; Pg. 14
The West Australian (Perth)
April 19, 2010 Monday
Second Edition

An Australian camp counsellor labelled a child predator by US authorities has surprised Texas prosecutors by agreeing to serve 40 years in prison for sexually assaulting five young boys at a summer camp.

When Scott Zirus, 26, from the South-West town of Pinjarra, was led into court in Kerrville, Texas, he was expected to plead not guilty but in an about-face that also surprised his lawyer, Zirus admitted his guilt and accepted a plea deal he had rejected days earlier.

Todd Burdick, an investigator in the Kerr County District Attorney's office, said WA authorities would have to wait until Zirus finished his sentence in Texas before he could be brought before the courts in Australia.

In WA, Zirus is accused of eight counts of indecent dealing with a child under 13, one count of procuring and inciting a child to do an indecent act and one count of indecently recording a child.

Molester to serve 40 years

WORLD; Pg. 44
The Sunday Mail (Queensland, Australia)
April 18, 2010 Sunday
2 - State - Main Country Edition

LOS ANGELES: An Australian camp counsellor labelled a "child predator" by US authorities has surprised prosecutors by agreeing to serve 40 years in prison for sexually assaulting five young boys at a summer camp.

When Scott Zirus, 26, from Pinjarra, Western Australia, was led into court in Kerrville, Texas, on Friday he was expected to plead not guilty to the assaults.

But in an about-face that also surprised his lawyer, Zirus admitted his guilt and accepted a plea deal.

Just days ago Zirus rejected the 40-year plea deal.

Prosecutors had vowed to seek the maximum sentence under Texas law of life in jail if Zirus took the case to trial and forced his young victims, aged five and six years, to testify in court.

"If we were going to go to trial, Zirus would never see the free world again," said Todd Burdick, an investigator in the Kerr County District Attorney's Office.

Zirus's American lawyer James Patterson said the threat of a life sentence in the Texas prison system had weighed heavily on Zirus.

Zirus is eligible for parole in 20 years.

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After Zirus' computer was examined by US authorities Kerr County Sheriff Rusty Hierholzer labelled Zirus a child predator and said Zirus may have Australian victims.

West Australian authorities began an investigation and interviewed 370 children who attended Australian camps involving Zirus . Four alleged victims came forward .

Mr Patterson said Zirus will apply to serve his Texas jail sentence in Australia , but the Kerr County DA's office says he will not be successful.

Mr Burdick said West Australian authorities will also have to wait until Zirus completes his sentence in Texas before he can be brought before the courts in Australia .

"They'll get a crack at him after he goes through the Texas penitentiary," Mr Burdick said. The Texas victims and their families were relieved Zirus entered the guilty pleas and would never be allowed to be a free man in the US again.

When Zirus serves his time he will be immediately deported to Australia and banned from entering the US. Zirus pled guilty in court on Friday to charges of aggravated sexual assault of a child, sexual contact with a child and continuous sexual abuse of a child under 14.

In Australia Zirus is accused of eight counts of indecent dealing with a child under 13, one count of procuring and inciting a child to do an indecent act and one count of indecently recording a child.

40-year deal for molester

PETER MITCHELL IN LOS ANGELES

News; Pg. 33

Sunday Mail (South Australia)

April 18, 2010 Sunday

1 - State Edition

AN Australian camp counsellor labelled a "child predator" by US authorities has surprised Texas prosecutors by agreeing to serve 40 years in prison for sexually assaulting five young boys at a summer camp.

When Scott Zirus, 26, from Pinjarra, in WA, was led into court in Kerrville, Texas, he was expected to plead not guilty to the assaults, but in an about-face that also surprised his lawyer, Zirus admitted his guilt and accepted a plea deal. Just days ago, he rejected the 40-year plea deal.

Prosecutors had vowed to seek the maximum sentence under Texas law of life in jail if Zirus took the case to trial and forced his young victims, aged five and six, to testify in court.

"If we were going to go to trial, Zirus would never see the free world again," said Todd Burdick, an investigator in the Kerr County District Attorney's Office.

Zirus is eligible for parole in 20 years.

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Publisher: AAP NewsWire
Publication: aap International News (Tue 27 Apr 2010 12:36:11 PM)
Edition: Both Cycles

US:FAMILIES OF AUST PEDOPHILE'S VICTIMS TO TELL OF THEIR PAIN

By Peter Mitchell

KERRVILLE, Texas, April 26 AAP - Australian pedophile Scott Zirus will come face-to-face in a Texas courtroom on Tuesday (Wednesday AEST) with the furious parents of the five young American boys he sexually abused at a summer camp last year.

The parents will have an opportunity to stare directly in Zirus' eyes, tell him about the devastation he caused to their five- and six-year-old sons and then watch as the 26-year-old is marched off to serve a 40-year jail sentence in Texas' harsh prison system.

The emotional confrontation, called an "open forum", will take place in the Kerr County Courthouse in the quaint rural town of Kerrville, about one hour's drive north of San Antonio, as part of Zirus' sentencing.

Earlier this month, Zirus agreed to plead guilty to the assaults and accept a 40-year plea deal offered by prosecutors from the Kerr County District Attorney's Office.

The prosecutors had vowed to send Zirus to jail for the rest of his life, but the plea deal ends the need for a trial and for his young victims to testify.

"The families didn't want their children re-victimised by putting them on the stand," Todd Burdick, a District Attorney's Office investigator, told AAP.

Zirus, a chubby 177cm tall, 91kg camp counsellor from Pinjarra, Western Australia, flew to Kerr County last year to work at a summer camp for boys.

He was charged with aggravated sexual assault of a child, sexual contact with a child and continuous sexual abuse of a child under 14.

After his arrest in Texas, West Australian authorities launched an investigation into Zirus, who ran his own camp in Australia, and found four alleged victims.

Zirus will face eight counts of indecent dealing with a child under 13, one count of procuring and inciting a child to do an indecent act and one count of indecently recording a child when he completes his US sentence.

He will be eligible for release in Texas after 20 years and will be immediately deported to Australia.

AAP pm/cdh

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Publisher: **AAP NewsWire**
Publication: **aap International News (Wed 28 Apr 2010 12:26:49 PM)**
Edition: **Both Cycles**

US: PARENTS TELL OF DAMAGE CAUSED BY AUST PEDOPHILE

By Peter Mitchell

KERRVILLE, Texas, April 27 AAP - For almost an hour Australian pedophile Scott Zirus sat slumped in a chair in a Texas courtroom, his face emotionless as harrowing stories were told about the damage he'd inflicted on five young American boys entrusted in his care at a summer camp last year.

The parents of a six-year-old boy were the first to stand at a lectern in the Kerrville courthouse, just three metres from Zirus, whose legs were shackled.

Sheriffs stood close by in case the parents or Zirus tried to attack the other.

Objects were cleared from tables to prevent either party using them as missiles.

The mother, her hands trembling, looked directly into Zirus' eyes and told how excited her son was to attend his first summer camp in Hunt, Texas, but returned home a different boy.

The vivacious young lad was now "more reserved, guarded and not as trusting" after being befriended, then sexually abused, at the camp by the 26-year-old counsellor.

The boy is undergoing therapy and may have to continue the sessions for many years to come.

"As his mother, I am angry his innocence has been stripped away," she told Zirus, who stared back stone-faced.

Next up was the mother and father of a seven-year-old who was so traumatised after being assaulted by Zirus at the camp he has trouble stepping outside his home.

"When he is out at public places he gets nervous," the boy's mother, who gave birth to a daughter just days after the allegations emerged last August, told Zirus.

"We feel we let him down by not protecting him."

The boy is also undergoing therapy.

The pain of facing Zirus was too much for the parents of two other victims, who declined to appear in court for what the Texas judicial system calls an "open forum".

The absent parents did submit victim impact statements that Rosa Lavender, Kerr County's victim services co-ordinator, read out in court.

The family of the fifth victim is filing a civil lawsuit and opted not to participate in the session.

"This is your time," Kerr County District Attorney Amos Barton told the family members before Tuesday's open forum began.

"It is your chance to look him in the eye and say your piece."

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Ms Lavender, reading from the impact statements, told how a six-year-old classified as "a gifted child" and who once loved cleaning his room, making his own breakfast and playing basketball and soccer, was so damaged by his encounter with Zirus that he is now haunted by nightmares and talks about dying.

The boy struggles in school, "exhibits signs of anxiety" and is constantly checking the doors at home to ensure they are locked.

"He talks, cries and screams in his sleep," Ms Lavender, reading from the victim impact statement, said.

"He has said he wished he weren't alive and wished he could go to sleep and never wake up.

"He will require years of therapy."

Ms Lavender also spoke for the family of another seven-year-old boy, whose mother opted not to attend.

"She was worried if she was in the same court as him (Zirus) she would not be able to control herself," the boy's grandmother, who observed from the second row, told AAP.

Zirus ran his own children's camp in Western Australia before taking up the job of counsellor at Camp Stewart, a popular 86-year-old summer destination for American boys an hour's drive north of San Antonio.

While Zirus appeared on the surface as a wonderful counsellor, blogs and web rants he issued under a pseudonym on MySpace revealed he was a self-professed leader of the Shadoran movement and believed it was "a fact that eight out of 10 boys are bisexual but only two out of these eight will ever admit it".

"I am a Shadoran and we have a special 'sexuality' called 'neltia' 'this 'sexuality' is unique because it has no boundaries (sic)," Zirus wrote on a MySpace blog prosecutors used as evidence.

"You are open to love from ANY age, race or gender ... I will love whom ever I love."

At Camp Stewart, Zirus slept in the same quarters as his victims and earned their trust by playing the didgeridoo and offering cookies.

The grandmother who attended Tuesday's court proceedings told AAP her grandson slept on a bunk directly above Zirus.

Three boys originally came forward, forcing sheriffs to scramble to San Antonio airport on August 20 to arrest Zirus minutes before his plane took off for the first leg of his journey home to Pinjarra, south of Perth.

Zirus was charged with aggravated sexual assault of a child, sexual contact with a child and continuous sexual abuse of a child under 14 and faced life imprisonment in Texas, but under a plea deal he agreed to a 40-year sentence.

He will be eligible for parole in 20 years, although it is unlikely he will be granted early release because of the number of victims and the nature of crimes.

While the young boys' parents vented their anger and pain during their court addresses, Zirus declined to speak when Kerr County District Court Judge Melvin "Rex" Emerson asked if he had anything to say his victims.

"No, sir," Zirus quietly said.

That angered the parents in court.

"He could have stood up and just said 'sorry'," a six-year-old victim's father told AAP.

"It really grates on me because the last words Scott Zirus said to me was when we picked up my son at camp. He looked me in the eye and said: 'See you next year'."

The Texas investigation led Western Australian authorities to launch their own Zirus probe and after interviewing several hundred children, found four alleged Australian sex abuse victims.

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 Edition: Both Cycles

US: US COURT SENTENCES AUST PEDOPHILE TO 40 YEARS

By Peter Mitchell

KERRVILLE, Texas, April 27 AAP - The parents of two young boys victimised by Scott Zirus at a Texas summer camp came face-to-face with the Australian pedophile during an emotional court hearing on Tuesday that culminated in a judge issuing a 40-year prison sentence.

The parents vented their anger, pain and heartbreak at the destruction Zirus had caused to their "innocent" boys.

Zirus, dressed in a blue prison jumpsuit and his legs shackled, sat calmly in the courthouse in Kerrville, Texas, about one hour's drive north of San Antonio.

"As his mother I am angry his innocence has been stripped away," one mother, not named in court to protect the identity of her six-year-old son, told Zirus.

Zirus, 26, from Pinjarra, south of Perth, pleaded guilty to assaulting five young boys while working as a counsellor at a summer camp in Hunt, Texas, last year.

Two sets of parents addressed the court, a victim services counsellor read out victim impact statements from two other families while the fifth family declined to address the court.

After the parents gave their painful addresses, Kerr County District Court Judge Melvin "Rex" Emerson offered Zirus a chance to say something to the parents but he declined.

"Mr Zirus, do you have anything to say before sentencing?" Judge Emerson asked.

"No, sir," Zirus said.

Judge Emerson then confirmed a 40-year jail sentence agreed under a plea deal between prosecutors and Zirus earlier this month.

The sentence will be served in Texas and he will be eligible for parole in 20 years.

District Attorney Amos Barton said outside court it was likely Zirus would have to serve the entire 40 years considering the number of victims and nature of the crime.

When Zirus, who ran his own children's camp in Western Australia and worked with Scouts, is released, Australian authorities will be waiting for him.

After Texas sheriffs charged him last August and videos and photos were found on his laptop computer, an investigation by West Australian authorities discovered four young Australian sex abuse victims.

When his Texas jail sentence is completed Zirus will be deported to Australia to face the West Australian charges.

AAP pm/bw/jnb

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The West Australian

3 July 2014

WA SEX ABUSER WANTS BISHOP'S HELP

Tim Clarke

A West Australian man serving a 40-year jail term in Texas for sexually abusing children at a summer camp has made a plea to Foreign Affairs Minister Julie Bishop to help his appeal against what he describes as his "wrongful and illegal incarceration".

Scott Zirus, originally from Pinjarra, was jailed in the US in 2010 after accepting a plea deal over allegations he assaulted three boys while working at the Camp Stewart for Boys in Hunt, Texas, as part of an international exchange program.

He was convicted of aggravated sexual assault of a child, sexual contact with a child, and continuous sexual abuse of a child younger than 14, and will have to serve at least 20 years of his sentence until he is eligible for release.

In a letter to The West Australian, Zirus revealed he intends to argue his innocence to the US Court of Appeals, claiming he was "illegally interrogated" by police before his confession.

And he is demanding Australia supply a US lawyer to oversee his case, a request sent to Ms Bishop's office last month.

"The reason for this request is that consulate officials lack the requisite knowledge of constitutional and Federal appellate law to recognise an error," Zirus wrote.

Ms Bishop's office confirmed the Department of Foreign Affairs and Trade was monitoring Zirus' case.

"The embassy will continue to provide appropriate consular assistance to Mr Zirus," a department spokesman said.

Zirus claims that if he is not supplied a lawyer, Australia will be "failing its duty to affirmatively protect his rights".

From his prison cell in Abilene, Texas, he has launched a website and Facebook page pleading his innocence.

Zirus was accused of molesting several boys at the camp while sleeping in the same room.

Camp Stewart and Camp America, who employed Zirus, have since settled lawsuits for more than \$8 million after being sued by Zirus' American victims.

He is also facing an arrest warrant in WA over 10 alleged offences against four boys at the Grassroots Ventures camps he ran in the Peel region between 2006 and 2008.

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NO. B09-490, B09-552 & B09-553

THE STATE OF TEXAS

VS.

SCOTT ASH JAMES ZIRUS

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IN THE DISTRICT COURT OF


KERR COUNTY, TEXAS

198TH JUDICIAL DISTRICT

REJECTION OF PLEA OFFER

My name is SCOTT ASH JAMES ZIRUS, I am the Defendant in the above named and numbered causes. I have been given, by my Attorney, James W. Patterson, the offer made by the State of fifty (50) years confinement in the Texas penitentiary. I understand that if I am tried that there is a possibility that I may receive life in the penitentiary. I also understand that for the charge of continuous sexual activity, that there is a minimum time in the penitentiary of twenty five (25) years. I also understand that if I am tried on each of the charges and found guilty of any of the charges that each charge can be stacked on each charge and I will have to serve one time of commitment, before I can start serving the next term of commitment. This means that if I received three (3) twenty (20) year sentences that I could be made to serve each of the twenty (20) year sentences, totaling sixty (60) years.

Understanding all of the above, I do not want to take the fifty year offer.



SCOTT ASH JAMES ZIRUS
Defendant