

BEFORE THE GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES

HENRY WATKINS SKINNER
Gray County Criminal Case No. 5216
February 24, 2010 Execution Date

**APPLICATION FOR 90-DAY REPRIEVE FROM
EXECUTION OF DEATH SENTENCE**

Per Texas Administrative Code, Title 37, Part 5, Rule 143.43(f)(3)
A PUBLIC HEARING REQUESTED

Per Texas Administrative Code, Title 37, Part 5, Rule 143.43(d)
**AN INTERVIEW WITH A MEMBER OF THE
TEXAS BOARD OF PARDONS AND PAROLES IS REQUESTED**

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AUTHORIZED REPRESENTATIVE FOR
HENRY WATKINS SKINNER [[SEE APPENDIX A.](#)]

This Application for 90-day Reprieve from Execution of Death Sentence is presented in behalf of Henry Watkins Skinner in compliance with § 143.42 and § 143.43 of Title 37 of the Texas Administrative Code.

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A webpage is available to the members of Texas Board of Pardons and Paroles to keep them up-to-date on the actions and developments in each of Mr. Skinner's pending judicial actions. This webpage is

<http://www.excitatio.com/hanskinner/index.html>

Other information about Mr. Skinner's case is available online at

<http://www.hanskinner.org>

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Appendix I	September 27, 1997 Andrea Joyce Reed Affidavit.
Appendix J	Letters in Support for Commutation from Relatives, Friends and Concerned Citizens. <ol style="list-style-type: none">1) Dr. David Protess, Director of the Northwestern University Medill Innocence Project.2) Reverend Albert Maggard, Mr. Skinner's Spiritual Counselor and Pastor of the First Pentecostal Holiness Church of Pampa, Texas.3) Sandrine Ageorges-Skinner, Mr. Skinner's wife.

February 1, 2010

To the Governor and the Honorable Members of the Board of Pardons and Paroles:

Application for 90-day Reprieve from Execution of Death Sentence

Henry Watkins Skinner authorized me, Ward Schurman Larkin, to file this Application for 90-day Reprieve of Execution from Death Sentence. I am acting on Mr. Skinner's request and in his behalf, and I will receive no fee in connection with Mr. Skinner's Applications for Executive Clemency.¹

Mr. Skinner requests an interview with a member of the Texas Board of Pardons and Paroles per Title 37 Rule 143.43(d) of the Texas Administrative Code. Mr. Skinner requests an open public hearing before the Texas Board of Pardons and Paroles as authorized by Title 37 Rule 143.43(f)(3) of the Texas Administrative Code.

This Application for 90-day Reprieve from Execution of Death Sentence is necessarily incomplete because the State of Texas, through its District Attorney of the 31st Judicial District for Gray County, continues to deny Mr. Skinner access to vital crime-scene evidence that has never been subjected to forensic DNA testing. If such access were permitted, and testing performed, then the results of that testing would powerfully demonstrate Mr. Skinner's innocence and why Executive Clemency should be granted in this matter. The District Attorney's actions thus are denying Mr. Skinner a full and fair opportunity to seek Executive Clemency, in violation of the constitution and laws of the State of

¹ See [Appendix A](#): Mr. Skinner's sworn Authorization to File Applications for Executive Clemency, and Ward Larkin's Fee Waiver Affidavit.

Texas and the United States Constitution's guarantees of due process and against cruel and unusual punishment. This state-created interference with Mr. Skinner's rights is presently being challenged in federal court. Pending the outcome of that lawsuit, Mr. Skinner reserves to right to amend and/or supplement this Clemency Application, or to submit an entirely new Clemency Application, as may be necessary to present in its entirety his fully developed case for Clemency.

This Application for 90-day Reprieve from Execution is presented to the Texas Board of Pardons and Paroles by item number per Title 37 Rule 143.42 of the Texas Administrative Code:

1. Henry Watkins Skinner is the applicant. His Texas Department of Criminal Justice Identification Number is 0999143. He was born on April 4, 1962.
2. Ward Schurman Larkin is Mr. Skinner's authorized Clemency agent, presenting this Application for 90-day Reprieve from Execution of Death Sentence to the Texas Board of Pardons and Paroles. ([See Appendix A.](#))
3. Certified copies of the following trial court records are provided:
 - a) True Bill of Indictment. ([See Appendix B.](#))
 - b) Verdict of the jury on Guilt, including the court's charge to the jury on Guilt/Innocence. ([See Appendix C.](#))
 - c) Verdict of the jury on Punishment, including the court's charge to the jury on Punishment. ([See Appendix D.](#))
 - d) Capital Judgment. ([See Appendix E.](#))
 - e) Order Setting Date of Execution and Death Warrant ([See Appendix F.](#))

4. Mr. Skinner lived with Twila Busby and her two adult sons, 22-year old Elwin Caler and 20-year-old Randy Busby.² Around 9:30pm on December 31, 1993, Miss Busby and Mr. Skinner phoned a friend, Howard Mitchell, and told him they wanted to attend his New Year's Eve party, but needed a ride. Between 10:15 and 10:30pm, when Mr. Mitchell came to pick up the pair, he found Mr. Skinner passed out on the couch, and even with exerted effort was unable to wake him.³ Mr. Skinner had been heavily drinking.⁴ Leaving Mr. Skinner in his stupor, Ms. Busby and Mr. Mitchell went to Mitchell's home where a party was in progress. Ms. Busby's drunken uncle, Robert Donnell, followed her around at the party, making rude sexual advances toward her and generally agitating her until she asked Mr. Mitchell to take her home. Mr. Mitchell drove Ms. Busby home between 11:00 and 11:15pm. Mr. Donnell was no longer at the party when Mr. Mitchell returned. At midnight police were dispatched to an address across the alley from Ms. Busby and Mr. Skinner's residence, finding Elwin Caler with a mortal stab wound under this left arm. Mr. Caler died at the hospital at 12:45am without identifying his killer. Twila Busby was found

² Mr. Skinner was 5'9", 145 lbs, Mr. Caler 6'6", 245 lbs. and Mr. Busby 6'1", 180 lbs.

³ [Appendix H](#) contains a September 29, 1994 interview of Howard Mitchell by Gray County District Attorney Office investigator Bill McMinn. Mr. Mitchell said that he "jerked on [Mr. Skinner's] arm and everything ... [a]nd there wasn't no response at all". See page 1.

⁴ At 5:48am on January 1, 1994, after his arrest, Mr. Skinner voluntarily gave blood for a toxicological test. His blood alcohol level was 0.11 percent, and he had 0.11 milligrams of codeine per liter of blood. Dr. William Lowry, a forensic toxicologist, testified that Mr. Skinner's intoxication levels at midnight were likely 0.21% blood alcohol and 0.44 milligrams of codeine (about three times the therapeutic dose) per liter of blood. Dr. Lowry also explained that alcohol taken with codeine has a synergist effect, a combined intoxication greater than the sum of the separate intoxicating effects. Mr. Skinner is allergic to codeine, and ingested it by accident that night. Dr. Lowry's November 16-18, 2005 federal evidentiary hearing testimony is available online at <http://www.excitatio.com/hansskinner/HT111705v2.pdf> See PDF pages 53 to 145.

in her home strangled and beaten to death.⁵ Randy Busby was found dead in his bed, stabbed in the back.

5. Mr. Skinner was sentenced to death in March of 1995, found guilty of intentionally and knowingly murdering more than one person during same criminal transaction: namely, Mr. Skinner's girlfriend Twila Busby and her two adult sons, Randy Busby and Elwin Caler. Mr. Skinner's conviction and death sentence were affirmed by the Texas Court of Criminal Appeals on direct appeal, *Skinner v. State*, 956 S.W.2d 532 (Tex. Crim. App. 1997) cert. denied, 523 U.S. 1079 (1998). On March 26, 1998 Mr. Skinner filed an application for Texas State habeas corpus relief with the presiding trial court, but his efforts to obtain habeas corpus relief from the Texas courts were ultimately dismissed on procedural grounds.⁶ On February 4, 1999 Mr. Skinner filed a petition for Writ of Habeas Corpus with the U.S. District Court, which was denied on February 22, 2007. *Skinner v. Quarterman*, No. 2:99-CV-0045, 2007 WL 582808 (N.D. Texas, 2007)(unpublished). On May 14, 2008 the U. S. Court of Appeals for the Fifth Circuit granted a Certificate of Appealability on two issues, each regarding whether Mr. Skinner was denied his Constitutional Right to effective assistance of counsel during the guilt/innocence portion of his trial. *Skinner v. Quarterman*, 528 F.3d 336 (5th Cir. 2008). After receiving

⁵ The medical examiner testified at trial that Ms. Busby was first manually strangled with such force that her larynx and the right side of her hyoid bone were broken. She was next beaten with an ax handle 14 times. Pampa Police Officer Morse Burroughs concluded from crime-scene blood spatter that Mr. Caler was home, in the same room when his mother was beaten.

⁶ See [Appendix G](#). The U.S. District Court Magistrate Judge explains why Mr. Skinner's Texas state habeas claims were dismissed.

additional briefing, the Fifth Circuit affirmed the U.S. District Court and denied Mr. Skinner federal habeas corpus relief on July 14, 2009. On August 28, 2009 the Fifth Circuit denied a Motion for Rehearing En Banc. On November 23, 2009 Mr. Skinner filed a Petition for Writ of Certiorari with the Supreme Court of the United States. A Supreme Court ruling is pending. Also, completely independent of the appellate history in his case, Mr. Skinner has filed separate original actions with the courts relating to his death sentence. They are detailed below.

6. Mr. Skinner has raised the following legal issues in the judicial progress of his case, both on appeal and in separate original legal actions.

APPEAL – Ineffective Assistance of Trial Counsel: Failed to impeach prosecution witness Andrea Reed, failed to present evidence that Mr. Skinner is allergic to codeine, failed to get an expert to analyze the blood spatter evidence from the original crime scene, failed to fully investigate Robert Donnell as the real murderer, and failed to conduct comprehensive DNA testing on biological crime-scene evidence.

APPEAL – Prosecutorial Misconduct before and during trial: police threatened and intimidated Andrea Reed into making a false police report and giving false testimony at trial regarding Mr. Skinner's conduct on the night of the murder, prosecution didn't disclose to the defense attorneys that police had so intimidated Ms. Reed, and while Mr. Skinner was held in custody awaiting trial, the Sheriff read and copied written correspondence between Mr. Skinner and his attorneys.

APPEAL – Violations of Mr. Skinner’s rights to a fair trial: the trial judge improperly ordered a confidential defense toxicology report released to the prosecution, the trial judge allowed the prosecution to ask improper questions of prospective jurors, the trial judge didn’t properly instruct the jury on the lesser included offense of murder, the trial judge didn’t properly instruct the jury on Mr. Skinner’s alleged unadjudicated extraneous offenses, and the trial judge improperly allowed Mr. Skinner’s ex-wife to give non-probative inflammatory testimony to the jury during the punishment phase of the trial.

ORIGINAL LEGAL ACTIONS – On December 10, 2003 the Texas Court of Criminal Appeals denied Mr. Skinner’s 1st Texas State Motion for Post-Conviction DNA testing. On September 23, 2009 the Texas Court of Criminal Appeals denied Mr. Skinner’s 2nd Texas State Motion for Post-Conviction DNA testing. On November 27, 2009 Mr. Skinner filed a lawsuit in U.S. District Court against Lynn Switzer, District Attorney in Gray County, Texas asking the federal courts to order Ms. Switzer to allow Mr. Skinner to perform DNA tests on crime-scene evidence still held by the Office of the Gray County District Attorney. On January 20, 2010 U.S. District Judge Mary Lou Robinson dismissed the lawsuit. On January 25, 2010 Mr. Skinner appealed to the Fifth Circuit.

7. Mr. Skinner requests a 90-day reprieve from execution of his death sentence so he can, 1) continue to pursue those judicial legal actions that as

of this writing have not yet been resolved, and 2) test vital crime-scene evidence that has not yet been subjected to forensic DNA testing.

8. There are only two grounds upon which the Texas Board of Pardons and Paroles should grant reprieve from execution of death sentence: 1) to give the condemned a full and fair opportunity to present new claims to the courts (e.g. results of previously untested DNA evidence), and 2), to wait until all pending claims before the courts have been fully decided. Mr. Skinner requests no more, and expects no less. As of this writing, Mr. Skinner has the following judicial claims planned or pending:

- a) On November 23, 2009 Mr. Skinner filed a Petition for Writ of Certiorari before the Supreme Court of the United States of America, *Henry W. Skinner v. Rick Thaler*, Case No. 09-7784. Mr. Skinner alleges that multiple ineffective assistance of counsel claims, and their totality, violated his Constitutional right to a fair trial. The State of Texas filed its response on January 25, 2010.⁷
- b) On November 27, 2009 Mr. Skinner filed an original lawsuit in U.S. District Court in Amarillo, Texas, *Henry Watkins Skinner vs. Lynn Switzer*, Case number 2:09-CV-0281. Mr. Skinner alleged a cause of action under Title 42 U.S. Code § 1983, asserting that Ms. Switzer's (the District Attorney of Gray County, Texas) refusal to allow Mr. Skinner access to biological evidence for purposes of forensic DNA testing

⁷ The current U.S. Supreme Court docket information about this case is available online at <http://origin.www.supremecourtus.gov/docket/09-7784.htm>

violates his Fourteenth Amendment right to due process and his Eighth Amendment right to be free from cruel and unusual punishment. On January 20, 2010, U.S. District Judge Mary Lou Robinson dismissed this lawsuit. On January 25, 2010 Mr. Skinner appealed to the U.S. Court of Appeals for the Fifth Circuit.

- c) On January 14, 2010 Mr. Skinner filed an Original Petition for Writ of Mandamus before the Texas Court of Criminal Appeals, *In Re: Henry Watkins Skinner*, Case Number WR 20,203-05. Mr. Skinner alleges the trial judge violated his duty by not ruling on an emergency motion filed on December 22, 2009, where Mr. Skinner alleged that the Texas Department of Criminal Justice is interfering with his Constitutional right to seek Executive Clemency. On January 27, 2010 the Texas Court of Criminal Appeals dismissed the claim. Appeals are pending.
- d) Mr. Skinner is planning to file an original complaint under U.S. Code Title 43, Section 1983 in U.S. District Court alleging that the State of Texas violated, is violating and will likely continue to violate his 8th Amendment right to be free from cruel and unusual punishment.
- e) Mr. Skinner is planning to file a state successor Petition for Writ of Habeas Corpus claiming that the State of Texas violated, is violating, and will likely continue to violate his 8th Amendment right to be free from cruel and unusual punishment.
- f) Mr. Skinner is planning to file a state successor Petition for Writ of Habeas Corpus claiming actual innocence.

Each of the aforementioned legal actions is important, not to be criticized or tampered with. If any of these judicial claims is still pending before the courts when the time comes, then the Texas Board of Pardons and Paroles must recommend to Governor Rick Perry that he grant a reprieve from execution for Mr. Skinner. Similarly, if Mr. Skinner has not been allowed to subject vital crime-scene evidence to forensic DNA testing, then the Texas Board of Pardons and Paroles must recommend to Governor Rick Perry that he grant a reprieve from execution of death sentence for Mr. Skinner.

9. The effect of the crime upon the family of the murder victims was devastating. Twila Busby's mother and stepfather, Beverly and Melvin Clark, lived in Pampa and paid some of Twila and her sons' living expenses. Mrs. Clark has since died. Twila had at least one brother, Doug. Melvin Busby was Randy Busby's father, and after his divorce from Ms. Busby 12 years earlier he stayed in Randy's life. In fact, he took Randy Busby and Elwin Caler out to dinner the evening of the murders.

CONCLUSION

Everyone in the United States has a 1st Amendment right to petition the government, petition the courts, for redress of grievance. This is especially true for individuals sentenced to death. No one wants an innocent man or woman to be executed. In turn the courts have a solemn duty to decide these petitions for redress of grievance. If, for whatever reason, the courts do not issue a decision in any one of Mr. Skinner's petitions to the courts, then the Texas Board of Pardons

and Pardons must act. Likewise, if there is still untested crime-scene DNA evidence, then the Texas Board of Pardons and Paroles must act.

The members of the Board cannot allow a man to be executed who has unresolved judicial claims pending before the courts, nor allow a man to be executed who can prove his innocence but for untested DNA evidence. To do otherwise would be repugnant to our American ideals of justice. Thus, if the time comes and judicial legal claims are still pending, or vital crime-scene DNA evidence still remains untested, then the Texas Board of Pardons and Paroles must vote to recommend to the Governor a reprieve from execution.

Respectfully submitted,

Ward Larkin
Authorized Representative for Henry Watkins Skinner

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Omar Khayyam (1048–1131). Rubaiyat 51.
Translation by Edward J. Fitzgerald. 1859.

The Moving Finger writes; and, having writ,
Moves on: nor all your Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all your Tears wash out a Word of it.

Is it worth the risk of executing an innocent man? Once it's done, it can't be cancelled. The moving finger moves on. Having writ, it won't be forgotten, not half a line, not a word. Piety and Wit will be useless. Tears won't cleanse the soul. An innocent man will have been executed. Is it worth the risk?