

Parlin, Kurtis

From: rattler [rattler@earthlink.net]
Sent: Wednesday, August 19, 2009 4:49 PM
To: 'Rick Maes'; Parlin, Kurtis; Bierman, Karen
Cc: 'Michelle R. DeSmet'; 'Patricia A. Roos'; 'Maria A.Caram Ibarra'; Fox, Laurie
Subject: RE: Olga Franco v. State; File 42-CR-08-220

To all:

I have no objection to the State filing a formal Answer and agree, to the extent authorized by the applicable law, to waive the time deadline as to the State's formal Answer.

I did mail the exhibits to the Court Administrator and thought a copy went to Rick, also.

Respectfully,
Neal A. Eisenbraun

From: Rick Maes [mailto:RickMaes@co.lyon.mn.us]
Sent: Wednesday, August 19, 2009 4:31 PM
To: Parlin, Kurtis; rattler@earthlink.net; Bierman, Karen
Cc: Michelle R. DeSmet; Patricia A. Roos; Maria A.Caram Ibarra; Fox, Laurie
Subject: RE: Olga Franco v. State; File 42-CR-08-220

Greetings to all.

I was served with a copy of the Petition for Post-Conviction by Ms. Bierman on August 6, 2009. I was informed that the court would be notified of this service date. I was calculating the twenty day response period from the time that I was served with the Petition by the court. I was also expecting to receive a copy of any exhibits filed in this matter, but have not received those. Be advised that I did intend on filing a formal answer.

However, if I misunderstood the court's prior order and am required to submit an answer by day's end, please be advised that the State will not be filing a formal answer addressing each of petitioner's assertions set out in her Petition.

Instead, please accept the following as the State's answer to the Petition in this matter.

A petition for postconviction relief must contain "[a] statement of the facts and grounds upon which the petition is based." Minn. Stat. § 590.02, subd. 1(1) (2004). An evidentiary hearing is not required unless facts are alleged that, if proved, would entitle the petitioner to relief. *Hodgson v. State*, 540 N.W.2d 515, 517 (Minn. 1995). "The petitioner's allegations must be 'more than argumentative assertions without factual support.'" *Id.* (quoting *Belowski v. State*, 289 Minn. 215, 217, 183 N.W.2d 563, 564 (1971)). "The facts alleged must be more than bald assertions or conclusory allegations without factual support." *Berg v. State*, 403 N.W.2d 316, 318 (Minn. Ct. App. 1987), *rev. denied* (Minn. May 18, 1987). The allegations of a postconviction petition

must be specific, and not generalized. *Fratzke v. State*, 450 N.W.2d 101, 102 (Minn. 1990).

In the present case, Petitioner has failed to meet her burden. The assertions being made are all speculative, conclusory or based on non-admissible materials. Therefore the petition should be denied without an evidentiary hearing.

Sincerely,

Richard R. Maes

Lyon County Attorney

From: Parlin, Kurtis [mailto:Kurtis.Parlin@courts.state.mn.us]
Sent: Wednesday, August 19, 2009 3:50 PM
To: Rick Maes; rattler@earthlink.net; Bierman, Karen
Cc: Michelle R. DeSmet; Patricia A. Roos; Maria A. Caram Ibarra; Fox, Laurie
Subject: Olga Franco v. State; File 42-CR-08-220

August 19, 2009

Sent via U.S. Mail, email, and facsimile

Karen Bierman (karen.bierman@courts.state.mn.us)
Lyon County Court Administrator
607 West Main Street
Marshall, MN 56258

Neal Eisenbraun (rattler@earthlink.net)
Neal A. Eisenbraun, Chartered
731 58th Avenue Northeast
Fridley, MN 55432

Richard Maes (RickMaes@co.lyon.mn.us)
Lyon County Attorney's Office
607 West Main Street
Marshall, MN 56258

Re: Olga Marina Franco del Cid v. State of Minnesota; Court File No. 42-CR-08-220

Dear Ms. Bierman, Mr. Eisenbraun, and Mr. Maes:

As outlined in the Postconviction Relief Scheduling Order, Judge Peterson ordered that any Petition for Postconviction Relief would need to be filed on or before July 29, 2009. As outlined in that same Scheduling Order, pursuant to Minnesota Statutes section 590.03, any Answer would need to be filed within twenty (20) days. That Scheduling Order was sent to each of you via email, and a hardcopy was delivered to the Court Administrator's Office in Lyon County. I believe that you all received it.

On July 29, 2009, I received the Petition for Postconviction Relief, Affidavit, and Exhibits via email. I believe that Ms. Bierman and Mr. Maes both received those documents on that date via email and/or fax as well. I believe that the original documents, including two exhibits that could not be faxed, were received at the Court Administrator's Office within a couple of days.

I am writing the three of you to inquire regarding whether an Answer has been filed. I believe an Answer from either the Lyon County Attorney's Office or the Attorney General's Office should have been filed, unless the State did not intend to file an Answer.

Very truly yours,

Kurtis G. S. Parlin (kurtis.parlin@courts.state.mn.us)
Law Clerk, The Hon. David W. Peterson
Redwood County Courthouse
PO Box 130
Redwood Falls, MN 56283

C: Office of Minnesota Attorney General Lori Swanson (by U.S. Mail only)
Michelle DeSmet (by email only: MichelleDeSmet@co.lyon.mn.us)
Patricia Roos (by email only: PatriciaRoos@co.lyon.mn.us)
Maria Caram Ibarra (by email only: macaram@usa.net)
Laurie Fox (by email only: laurie.fox@courts.state.mn.us)