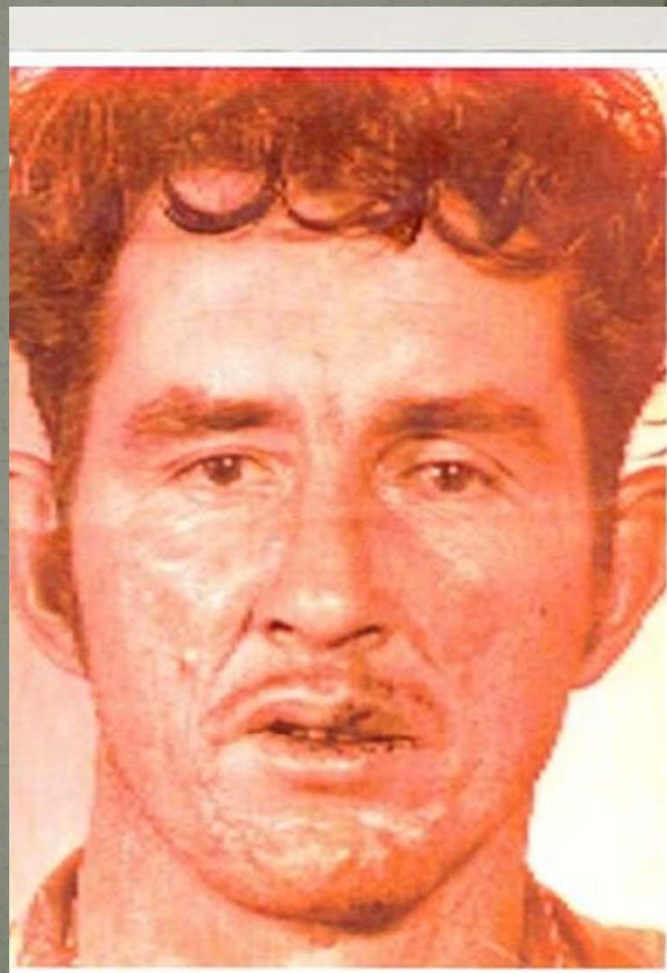


# Note To Self: The Legacy of Preston Armour Tate



*Dixon v. State*, 2 Tex 481 (1847)(no number)

Convicted of Gambling

Jury Verdict: 1 day and \$50

Committed to prison for 1 day and until he should pay the amount of fine assessed.

[Up and Out Date]

4



Up Date

Can't pay the fine  
Moves for discharge

*Denied*

Appeals

"punishing crimes and misdemeanors" (1 Stat., 187, sec. 47) provides that, "For all fines assessed, and costs of prosecution in criminal cases not capital, the person convicted may stand committed to prison by order of the court until such fine and costs be paid; and when it shall be made to appear to the court that the person so committed hath no estate or means to pay such fine and costs, it shall be the duty of the court to discharge such person from further imprisonment for such fine and costs, as in its discretion may deem proper."



- Fines are means of enforcing obedience.
- The law never intended to let a guilty person go free.
- Imprisonment is not to enforce payment but ensure punishment.
- Imprisonment is the punishment for refusing to pay.
- Inability to pay is not the same as refusal.
- The person unable to pay should be discharged.

## Preston Armour Tate

- Laborer
- *Chronic Scofflaw*
- 9 Convictions
- \$ 425.00
- Unable to Pay
- Judge Converted Fine To Time
- 85 Days
- 21 Days Later – Writ of Habeas Corpus



# HPD 1964 — 1970

- HERMAN B. SHORT APPOINTED AS NEW CHIEF
- HPD EMPLOYED 1,577 OFFICERS
- 95 HAD A BACHELORS DEGREE
- OFFICERS PERMITTED TO ACCEPT REWARDS
- SNAP-ON TIES INTRODUCED FOR SAFETY REASONS
- MOUSTACHES & SHORT SLEEVE SHIRTS PROHIBITED



THE HOUSTON POST  
WEDNESDAY, MAY 27, 1970

# Sheriff nearing sum to pay off judgment

Sheriff C. V. (Buster) Kern said Tuesday he expects to be able to pay off a \$25,500 damage judgment and court costs by the end of the week.

Kern received a check for \$11,411.10 Tuesday from Bud Heron, chairman of the Greater Houston Trail Riders Association.

The sum represented proceeds from a barbecue held by the trail riders May 3 to benefit the sheriff.

The amount brought the total raised so far to about \$21,000, including individual

contributions, according to a sheriff's department spokesman.

Kern said "close friends" would get him the remaining \$9,000 needed to take care of the total amount of about \$30,000 by the end of the week.

The sheriff was sued in federal court by William Whirl, 48, of 1206 Mathews, who asked the amount as repayment for nine months of unlawful imprisonment and the loss of his artificial leg while he was in custody.



1969

55,852 Prisoners  
Processed at City Jail

---

13,405 Prisoners Transferred  
To Prison Farm

24%







**What Is The Rate  
At Your Jail?**

## Writ Hearing- State Stipulates

*He is poverty stricken*

*His whole family has been*

*For all periods of time herein*

*And probably always will be*

*\$25-\$60/Week casual employment*

*\$104 V.A. Check*

*Supports a wife and 2 children*

*Owns a car*



Tex. Code Crim. Proc., Art. 45.53 (1966), provides in pertinent part:

"A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

"1. That he is too poor to pay the fine and costs; and

"2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of \$ 5 for each day."

County Criminal Court at Law

*Relief Denied*

4



Court of Criminal Appeals

*Relief Denied*

5

*Tate v. Short*, 401 U.S. 395 (1971)



“Since Texas has legislated a “fines only” policy for traffic offenses, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine.

Imprisonment in such a case is not imposed to further any penal objective of the State. “

“It is imposed to augment the State's revenues but obviously does not serve that purpose; the defendant cannot pay because he is indigent and his imprisonment, rather than aiding collection of the revenue, saddles the State with the cost of feeding and housing him for the period of his imprisonment.”

7



*Ex parte Preston A. Tate,*  
471 S.W.2d 404 (Tex. Crim. App. 1971)

While *Tate* was pending in the Supreme Court, the Legislature passed 7 amendments to the Code of Criminal Procedure providing for 3 payment options:

- Lump sum on entry of judgment.
- Lump sum in the future.
- Interval payments.

***Ex parte Rafael Minjares, 582 S.W.2d 105  
(Tex. Crim. App. 1979)***

- El Paso Municipal Court convicted Rafael in 9 cases assessing fine and costs of \$788.
- Court immediately committed him to jail until the judgment “is fully paid or until he is otherwise discharged by law.”



Other issues involved jail credit and concurrent sentencing.

Granted Relief and ordered release and time payment plan.

11

## 45.041 Judgment

- Pay fine and costs to state.
- Judge may direct defendant to pay
- Lump sum when sentenced pronounced, or
- At future date, or
- Interval payments.
- Judge must credit time served per 42.03 and 45.048. [\$50 to \$150/day]



H - Jail - Prison Farm

# Probe spurs prison farm guards' suspension

## Jailed bricklayer serving 8 days claims pair beat him

P-4-1-87

By REY GUEVARA-VAZQUEZ  
and KATHERINE KERR  
Post Reporters

Two guards at the Municipal Prison Farm have been relieved of duty with pay pending an investigation into allegations that they beat a prisoner, a police spokesman said Tuesday.

The guards were identified as Charles Craig Hill, 36, who worked at the farm for nearly six years, and Gregory Glenn, 31, who worked as a guard for nearly three years, said Houston police spokesman J.C. Mosier.

The prisoner, Bernardo Perez, 22, of the 3000 block of Gulfcrest, was serving eight days for failing to pay three traffic tickets, including not having car insurance. He was treated at Ben Taub Hospital for injuries to his arm, back and kidneys.

Mosier refused to release details about the beating because it is under investigation.

Perez, however, said Tuesday that his misfortunes started in the early morning of March 24 after he left a cantina. He said he was wobbling home on a bicycle and accepted a ride from a Houston policeman.

Moments after the patrolman put the bicycle inside the car, the officer realized that Perez might have been too drunk to be riding on the road, Perez said.

Perez was arrested for public



Post photo by Rey Guevara-Vazquez

Perez, with farm guard G.L. Hernandez, stands in front of the office where he claims he was beaten.

intoxication, he said. The patrolman, however, ran a background check and discovered Perez had outstanding arrest warrants for not paying three traffic tickets.

Perez decided to pay off the tickets by working eight days at the police department's mounted police stable sweeping out horse waste.

On Friday, Perez said, two prison guards were upset because one prisoner was absent during a rou-

tine count from 9 to 10 p.m.

Perez said he was in his usual good mood, singing and joking with his prison mates, when two guards grabbed him by the wrist, twisted his arm and took him to a solitary cell where they beat him up.

He said the guards kicked him in the back and kidneys for about five minutes and then left him alone in a solitary cell used "for troublemakers" until Saturday,

when prison mates told other security guards about the beating.

Perez, a bricklayer from Harlingen, said he still doesn't know why the guards singled him out. Perez said the guards apparently did not like his attitude.

"I'm a happy man. I like to joke around and sing," Perez continued. "Maybe that's why they picked on me."

Perez, who will be released today from the prison farm, said he did not resist the beating.

"There was nothing I could do. All I did was put my arms up like this," Perez said, grimacing as he lifted his broken wrist in a sling as if to protect himself.

He said there were five witnesses to the beating.

Mosier said the Houston police internal affairs division is investigating the allegations because the prison farm does not have a division to investigate such complaints.

The Municipal Prison Farm is a separate entity from the Houston Police Department, Mosier said.

Capt. L.C. Atchison, head of the prison farm, said the incident is the first "since I've been here in over 10 years."

"I believe this is an isolated incident. At least I'm hoping so," Atchison said.

He said some procedural changes are likely to be made as a result of the allegations, but declined to elaborate.

## 45.045 Capias Pro Fine

- Judge may issue capias pro fine if defendant fails to satisfy judgment.
- Capias shall state amount of judgment and direct that defendant be brought before the court immediately, or next business day.



## 45.046 Commitment

On default

- Judge may commit to jail until discharged

- After hearing and written findings:

  - Defendant not indigent

  - Failed to make good faith effort to discharge;

or

- Defendant indigent; and

- Failed to make good faith effort to do c/s; and

- Could have done c/s without undue hardship.

## 45.047 Civil Collection of Fine After Judgment

On default in payment, judge may order execution against property.

*Alternative:*

*Consider providing information to local credit union.*



## 45.048 Discharged From Jail

Defendant discharging judgment in jail shall be released on habeas by showing:

- Too poor to pay; or
- Remained in jail long enough at \$50/day.

Court may double or triple/day payment.

H- Prison Farm

# 40 inmates of 'P Farm' released early for yule

Post 12-24-83  
Christmas opened some doors for about 40 prisoners at the Houston municipal prison Friday — a judge cut short their sentences.

Felix Stanley, director and presiding judge of Houston Municipal Courts, said he released the prisoners about 9 a.m. "so they could have the opportunity to be at home with their families and friends for Christmas."

Only those charged with Class C misdemeanors, such as public intoxication, petty theft or traffic violations, serve time at the prison, commonly referred to as the "P Farm."

The prisoners who had their prison terms commuted were originally scheduled to be released

no later than Wednesday, Stanley said. Only "a few" inmates will have to spend Christmas at the prison, located in the 8400 block of Mykawa, he said.

Stanley said authorities have gone easy on municipal prisoners in Houston the past 20 Christmases, and he has kept up the tradition since taking charge of the municipal courts in 1978.

"Usually there are three or four who don't want their sentences commuted," opting instead for a warm cell and Christmas meal compliments of the city, Stanley said.

"This is the first time that I can recall that no one wanted to stay in jail," he said.



## 45.049 Community Service

Judge may require defendant who fails to pay; or

Too poor to pay;

Discharge all or part of sentence by c/s.

*Is c/s cost efficient for city?*

## 45.203 Collection of Fines, Costs, and Special Expenses

- City governing body must create rules to enforce collection of judgments imposed by municipal court.
- Authorizes execution against property or imprisonment.
- May adopt rules and regs concerning the practice and procedure in municipal court.
- No freelance costs via municipal ordinance.



*10-10-82*

# LULAC will ask mayor to reopen prison farm probe

By JOHN GRAVOIS  
Post Reporter

The Houston chapter of the League of United Latin American Citizens will ask Mayor Kathy Whitmire to reopen a city investigation into allegations of wrongdoing at the city's Municipal Prison Farm, state and local LULAC officials said here Saturday.

Meanwhile, the FBI Friday began questioning past and present prison farm employees concerning allegations that prison farm officials violated the civil rights of several dozen inmates by not allowing them to bail themselves out after they began working off their sentences, one person questioned by agents told The Houston Post.

The FBI got involved in the case at the request of Justice Department civil rights officials, who were contacted by former guard Carlos Aguirre shortly after the city dropped its investigation almost a month ago. Aguirre said he turned to federal authorities "because the city investigation was a joke."

**THE LULAC OFFICIALS**, after questioning several past and present prison farm guards and supervisors, said they agreed city investigators put almost no effort into checking out the allegations before dropping their investigation about a month ago.

The guards and supervisors have accused prison Superintendent W.A. Scotten and Capt. Lonnie Atchison of committing wrongdoings ranging from the civil rights violations to misappropriating city property.

Whitmire ordered the city legal department to investigate their allegations, made in a letter to the mayor in June. The legal department, however, dropped the investigation after questioning only Scotten and Atchison, who told them that the allegations were unfounded, prison farm and city officials have said.

**"THAT OBVIOUSLY** was no way to

conduct an investigation," said Frank Ortiz, director of Houston's LULAC district office. "It needs to be reopened."

Ortiz, Elias Barrera, LULAC's state legal adviser, and Rafael Acosta, a member of Whitmire's Hispanic Advisory Committee and a LULAC member, said they will jointly make the request to have the city investigation reopened in a scheduled Oct. 20 meeting with the mayor.

That meeting was arranged privately by Whitmire two weeks ago. Ortiz said, at the same time the mayor was saying publicly she was not giving the prison farm issue any thought. Arranging the meeting fulfilled an earlier commitment by the mayor to meet with LULAC officials to discuss the prison farm, he said.

**AGUIRRE AND SEVERAL** other past and present prison guards and supervisors contend they were ordered by Scotten and Atchison not to inform inmates of their right to bail themselves out rather than working off their fines. They said the guards were ordered not to allow inmates to bail themselves out, even if they asked for the right.

The orders came because an increasing number of inmates were bailing themselves out after being urged to do so by guards, leaving the prison farm with too few inmates to adequately staff work crews, the guards maintained.

The prison farm at most times houses from 85 to 100 inmates, all in jail on misdemeanor charges, and provides work crews for all city departments upon request.

**THE GUARDS ALSO** alleged Scotten and Atchison were mishandling the prison's salvage operation.

City investigators did request Scotten take steps to clear up "what could appear to be misappropriation of city property in the salvage operation" as a result of those allegations, said Ed Cazares, first assistant city attorney.

*Ex parte Mirlo Luana Gonzales,*  
945 S.W.2d 830 (Tex. Crim. App. 1997)

Reminder:

Contempt proceedings trigger right to  
counsel.



## 45.091 Waiver of Payment of Fines and Costs For Indigent Defendants

Judge may waive payment on defaulting defendant on finding:

Defendant is indigent; and

Discharging judgment via c/s will impose undue hardship.

### MEDICAL EXAMINER'S INVESTIGATION

Autopsy  
~~XXXX~~

Case No. 77-3723

Investigator:

D.H. Gary

Decedent: Preston Armour Tate Race W Sex M Age 48

Address: 105 North Johnson Street, Pasadena, Texas

Death: August 1, 1977 Approx. Time 11:15 ~~XXX~~  
P.M.

Place of Death: Ben Taub General Hospital, Emergency Room, Houston, Texas

Place of Inquest: Harris County Morgue, Houston Police Department Officers W.J. Roper and  
B.R. Cannon, Unit 1160

Date and Time of Inquest: August 2, 1977 5:30 A.M.  
~~XXX~~

Information: According to Houston Police Department Officers W.J. Roper and B.R. Cannon, Unit 1160, this 48 year old white man was shot by Willie Ray Womack, 517 East 27th Street as he tried to rob a gas station at 3403 Irvington Boulevard at 10:30 p.m. on August 1, 1977. He was brought to the Ben Taub General Hospital Emergency Room via City of Houston Fire Department Ambulance, Unit 1109. He was pronounced dead on arrival by Dr. Kitten at the time and place above. There were no charges. Houston Police Department Homicide Detective V.W. West made investigation.

Autopsy Findings: 1. Gunshot wounds of abdomen (2).  
2. Gunshot wounds of abdominal wall.  
3. Gunshot wounds of left upper extremity (3), through and through.  
4. Grazing gunshot wound on right hand.

Toxicology: Alcohol - 0.014% (cerebrospinal fluid), Isopropanol and Methanol -  
Negative (cerebrospinal fluid), Barbiturates - Negative (blood),  
Autopsy by: Narcotics - Negative (blood, bile), Blood Group - "O"

Assistant Medical Examiner  
R.J. Bayardo, M.D.

Joseph A. Jachimczyk, M.D., J.D.  
Chief Medical Examiner of Harris County, Texas



