



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,663-01

**EX PARTE BERNADETTE PERSUSQUIA, AKA BERNADETTE PERUSQUIA,
Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2009CRN000882-D1(A) IN THE 49TH DISTRICT COURT
FROM WEBB COUNTY**

Per curiam.

OPINION

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of murder and sentenced to life imprisonment. The Fourth Court of Appeals affirmed her conviction. *Perusquia v. State*, No. 04-12-00126-CR (Tex. App. — San Antonio (June 12, 2013) (not designated for publication).

Applicant contends, among other things, that her trial counsel rendered ineffective assistance because counsel failed to present evidence that Applicant was aware of the victim's prior acts of

physical and sexual violence against his former wife to show that Applicant was reasonable in her apprehension of danger from the victim when she shot him.

On July 15, 2015, the trial court conducted a habeas hearing and heard testimony and evidence. The trial court has determined that trial counsel's performance was deficient in that counsel failed to provide the convicting court with an available, legally sufficient basis for admissibility of the victim's ex-wife's testimony regarding prior specific acts of physical and sexual violence against her by the victim, and that such deficient performance prejudiced Applicant. Relief is granted. The judgment in Cause No. 2009CRN000882-D1(A) in the 49th District Court of Webb County is set aside, and Applicant is remanded to the custody of the Sheriff of Webb County to answer the charges as set out in the indictment. The trial court shall issue any necessary bench warrant within 10 days after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice-Correctional Institutions Division and Pardons and Paroles Division.

Delivered: June 29, 2016
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