



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-12,095-11

EX PARTE PERRY WILEY, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 24880
IN THE THIRD DISTRICT COURT FROM ANDERSON COUNTY

Per curiam.

ORDER

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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of assault on a public servant and sentenced to two years' imprisonment with credit for pre-sentence jail time of over two years. This sentence was to begin when the sentence in his conviction for cause number 26278 from Bell County ceased to operate.

Applicant contends that he was released to parole in the Bell County case in 2009. At that time, this sentence should have begun to run and due to his pre-sentence jail time credit, would have

immediately discharged. He alleges that the Texas Department of Criminal Justice (TDCJ) rearrested him, stating that he was erroneously released because he needed to serve this conviction. He states that he has been held in TDCJ for over a year on this conviction, which should have discharged.

Applicant has alleged facts that, if true, might entitle him to relief. In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1997), the trial court is the appropriate forum for findings of fact.

The trial court shall order the Texas Department of Criminal Justice's Office of the General Counsel to file an affidavit listing the date he was released to parole on his Bell County case, the date this sentence began to run in this case, whether this sentence has ceased to operate, and how TDCJ is calculating his sentences. The affidavit shall state under which cause number he is currently being held and give the reasons for his return to TDCJ after his parole release. The affidavit should state whether or not Applicant is receiving credit for any of the time spent on parole.

The trial court may also order depositions, interrogatories or a hearing. If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact as to whether this sentence has discharged, what sentence Applicant is currently serving, and whether Applicant is receiving any time credit for the time spent out on parole. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 30 days of this order. If any continuances are granted, a copy of the order granting the continuance shall be sent to this Court. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be returned to this Court within 60 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: March 28, 2012

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