



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-33,873-03

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**EX PARTE DERRICK LEE GRIFFIN, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 18,110 IN THE 159TH DISTRICT COURT  
FROM ANGELINA COUNTY**

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*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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of murder, and he was sentenced to fifty years' incarceration. The Ninth Court of Appeals affirmed the conviction in an unpublished opinion. *Derrick Lee Griffin v. State*, No. 09-95-00262-CR (Tex. App. – Beaumont del. May 5, 1996).

Applicant alleges he is actually innocent and supports his claim with an affidavit from a forensic pathologist. He also argues his trial counsel was ineffective for failing to call such a forensic pathologist at trial. Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v.*

*Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). There is no response from trial counsel in the record provided to this Court, and there are no findings from the trial court regarding the merits of Applicant's claims. In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact.

The trial court shall order trial counsel to respond to Applicant's claim of ineffective assistance and explain applicable strategy and tactical decisions. In doing so, the trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d). 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 and conclusions of law regarding Applicant's claim of actual innocence and his claim of ineffective assistance of trial counsel. The trial court may also make any other findings of fact and conclusions of law 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 90 days of this order. 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 forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: August 22, 2012  
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