



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-46,587-02

EX PARTE BRENT RAY BREWER

**ON NOTICE OF NO APPLICATION FOR WRIT OF HABEAS CORPUS
FILED IN CAUSE NO. 6997-A IN THE 47TH DISTRICT COURT
RANDALL COUNTY**

Per Curiam.

ORDER

This case is before us because an application for writ of habeas corpus has not been filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, and because applicant has filed a motion to determine the correct filing date for the application.¹

¹ Unless otherwise indicated all references to Articles refer to the Code of Criminal Procedure.

Article 11.071 § 4 provides that a writ application is due to be filed in the convicting court not later than the 180th day after the date the court appoints counsel or not later than the 45th day after the date the State's brief is filed on direct appeal whichever date is later. In *Ex parte Reynoso*, 257 S.W.3d 715, 720 (Tex. Crim. App. 2008), this Court explained that the 180-day deadline runs from the latest date the court could have or should have appointed counsel (that is, within 30 days after the court determines whether the applicant is indigent and desires the appointment of counsel, which findings should be made "immediately after judgment is entered" in the case).

Counsel Richard L. Wardroup was appointed on September 10, 2009. Because the Office of Capital Writs was not yet running at that time, counsel should have been appointed from the list maintained by this Court. Looking at the timing provided in the statute, 180 days from September 10, 2009, would have been March 9, 2010. However, the State's brief on direct appeal was not filed until September 12, 2011, making 45 days from that date (October 27, 2011) the later, and therefore, proper due date for filing the application. Unfortunately, Wardroup was not on the approved list at the time of the appointment, therefore he was not properly appointed. Further, this Court did not receive the required notice of the appointment until many months later. Therefore, it could not timely fix the oversight. To still further complicate the matter, the original trial judge on the case died during this period of time.

When the new judge assigned to the case received notice from this Court that

another appointment was needed, he did not immediately take action. In fact, it was not until October 2011, when Wardroup brought the case to the attention of the court, that the court finally took action and again appointed Wardroup (who was now on the approved list) to represent applicant. The re-appointment was made on October 11, 2011.

But contrary to Wardroup's argument in the motion currently before the Court, this appointment did not generate a new 180-day deadline. Under the statute, as explained in *Ex parte Reynoso*, 257 S.W.3d at 720, the 45-day deadline still provided the later deadline. Thus, applicant's writ application was due to be filed in the trial court on or before October 27, 2011.² Because it was not, it is now untimely.

However, given these facts and the peculiar circumstances of this case, this Court finds that good cause has been shown under Article 11.071 § 4A for counsel's failure to timely file an application. The application shall be due in the trial court no later than 180 days after the date of this order. No further extensions shall be granted. Applicant's motion to determine a correct filing date is granted to the extent it corresponds with the relief set out in this order.

IT IS SO ORDERED THIS THE 20th DAY OF JANUARY, 2012.

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² Counsel timely filed a motion in the trial court for the statutorily allowed 90-day extension. However, this extension was not granted *before* the applicable filing date as is required by the statute; therefore, the order signed did not grant a valid extension.