



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-53,266-06

EX PARTE J.P. WASHINGTON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. F-0253827-MW IN THE 363RD DISTRICT COURT
FROM DALLAS 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of possession of a controlled substance and sentenced to thirty-five years' imprisonment. The Eleventh Court of Appeals affirmed his conviction. *Washington v. State*, No. 11-03-00153-CR (Tex. App.—Eastland 2004, pet. ref'd).

Applicant contends, among other things, that trial counsel failed to convey a plea offer of ten years. Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lafler v. Cooper*, 566 U.S. ____ (2012). 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. If the trial court determines that the factual basis of Applicant's claim was not ascertainable through the exercise of reasonable diligence on or before the date the -04 application was filed in the trial court, TEX. CODE CRIM. PROC. art. 11.07, § 4(c), the trial court shall order trial counsel to respond to Applicant's claim of ineffective assistance of counsel. 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 him at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall first make findings of fact and conclusions of law as to whether the factual basis of Applicant's claim was ascertainable through the exercise of reasonable diligence on or before the date the -04 application was filed in the trial court. TEX. CODE CRIM. PROC. art. 11.07, § 4(c). If the trial court finds that it was not, the trial court shall then make findings and conclusions as to whether: (1) the State offered Applicant ten years; (2) counsel conveyed this offer to Applicant; (3) Applicant would have accepted the offer; (4) the State would have withdrawn the offer; and (5) the trial court would have accepted the plea agreement. 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 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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