



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-62,418-02

EX PARTE RICKEY DEWAYNE WEBBER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. F-0176323-RT IN THE 283RD 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 capital murder and sentenced to imprisonment for life. The Eighth Court of Appeals affirmed his conviction. *Webber v. State*, 08-03-00177-CR (Tex. App.–El Paso April 15, 2004, pet. ref'd).

Applicant contends, among other things, that Kerressa Chumbley's testimony at trial was false. In a sworn affidavit dated August 16, 2010 and forwarded with this application, Chumbley stated that she wished to recant her testimony at trial and a statement she made to the police. Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Fierro*, 934 S.W.2d 370,

374-75 (Tex. Crim. App. 1996); *Ex parte Chabot*, 300 S.W.3d 768, 771 (Tex. Crim. App. 2009). 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 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 make further findings of fact and conclusions of law as to whether: (1) the factual basis of Applicant's claim was "ascertainable through the exercise of reasonable diligence" on or before the date he filed his previous application, TEX. CODE CRIM. PROC. art. 11.07, § 4(c); (2) Chumbley's affidavit is credible and her trial testimony was false; and (3) Applicant has shown by a preponderance of the evidence that the error, if any, contributed to his conviction or punishment. *Fierro*, 934 S.W.2d at 374-75; *Chabot*, 300 S.W.3d at 771. 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. 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 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: May 9, 2012
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