



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-72,148-02

EX PARTE JOSEPH DENNIS LEWIS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1060932 IN THE 178TH DISTRICT COURT
FROM HARRIS 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 murder and sentenced to imprisonment for life. The Fourteenth Court of Appeals affirmed his conviction. *Lewis v. State*, 14-07-00377-CR (Tex. App.—Houston [14th Dist.] May 29, 2008, pet. ref'd).

Applicant contends, among other things, that trial counsel failed to object to victim impact evidence. The trial court recommended that we deny this application because, when it was filed in Harris County, Applicant's direct appeal was pending before the Fourteenth Court of Appeals. Applicant's conviction was final for purposes of Article 11.07 when his application was filed in

Harris County. *Ex parte Webb*, 270 S.W.3d 108, 111 (Tex. Crim. App. 2008).

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). 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. 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 as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. 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: October 3, 2012
Do not publish