



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-73,350-01

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**EX PARTE PEDRO ENRIQUE POSADA, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 1037624 IN THE 176th DISTRICT COURT  
FROM HARRIS COUNTY**

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*Per curiam. Alcala, J., not participating.*

### 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated sexual assault of a child and sentenced to life imprisonment. The First Court of Appeals affirmed his conviction. *Posada v. State*, No. 01-06-00307-CR (Tex. App.–Houston [1<sup>st</sup> Dist.], delivered June 28, 2007, pet. ref'd).

The application in this cause was initially denied by this Court on February 24, 2010. The application raised, *inter alia*, allegations that Applicant was actually innocent based upon newly discovered evidence. On August 11, 2011, the Applicant filed a motion requesting that this Court

reconsider its prior decision *sua sponte*. We grant the Applicant's motion.

Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Calderon*, 309 S.W.3d 64 (Tex. Crim. App. 2010). 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 conduct a live evidentiary hearing in order to resolve the issues in this case.

It appears from the record that Applicant is currently represented by counsel. However, if this is no longer the case, the trial court 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 as to whether the Applicant is actually innocent based upon newly discovered evidence. 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.