



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-74,973-01

EX PARTE BILLY RAY BRYANT, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR01125 IN THE 102ND DISTRICT COURT
FROM RED RIVER 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 Sixth Court of Appeals affirmed his conviction. *Bryant v. State*, No. 06-08-00037-CR (Tex. App.—Texarkana 2009, pet. ref'd).

On January 12, 2011, we remanded this application and directed the trial court to determine whether perjured testimony was presented at trial and Applicant's due process rights were violated. *Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009). After holding an evidentiary hearing, the trial court concluded that neither false nor perjured testimony was presented at trial and that

Applicant's due process rights were not violated. The trial court recommended that we deny relief. We agree that Applicant's claim is without merit.

Applicant also contends that trial counsel rendered ineffective assistance. Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984). 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 counsel to respond to each of Applicant's ineffective assistance of counsel claims. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

Applicant appears to be represented by counsel. If he is not and 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 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 returned to this Court within 120 days of the date of this order. Any extensions of time shall be

obtained from this Court.

Filed: September 12, 2012

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