



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-75,224-03

EX PARTE LUKE REECE HOPKINS, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. CR20508 IN THE 35TH DISTRICT COURT
FROM BROWN 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of evading arrest and sentenced to ten years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that his sentence is illegal because it is outside the range of punishment authorized by the charge. He was charged with intentionally fleeing from a person he knew was a peace officer who was attempting to lawfully arrest him. The indictment listed one prior evading arrest conviction as an enhancement. Applicant pleaded

guilty to this offense and a charge of engaging in organized criminal activity. Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Rich*, 194 S.W.3d 508 (Tex. Crim. App. 2006); TEX. PEN. CODE § 38.04(b)(1)(A) (West 2010). The habeas record contains no documents from Applicant's guilty plea and no response from the State or the trial court.

In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1997), 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). In the appropriate case, the trial court may rely on its personal recollection. *Id.*

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 in regard to Applicant's claim that his sentence is illegal. Specifically, the trial court shall determine whether there is any support in law or fact for applicant's sentence of ten years' imprisonment in this cause. If the trial court determines that this sentence is within the applicable range of punishment, it shall make specific findings and conclusions in support of the finding. 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 60 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 90 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: February 1, 2012

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