



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-75,972-02

EX PARTE JACOB BARRON, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 06-6548-C IN THE 106TH DISTRICT COURT
FROM DAWSON 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 engaging in organized criminal activity and sentenced to ten years' imprisonment. He did not appeal his conviction.

This Court remanded this writ application to Dawson County on September 28, 2011 for, *inter alia*, findings of fact and conclusions of law addressing Applicant's claims of an illegal cumulation order and ineffective assistance of counsel. The habeas record after remand shows that

habeas counsel filed a motion for new trial and motion in arrest of judgment. The trial court granted Applicant's motion and re-sentenced him on December 21, 2011. The trial court's findings concluded that Applicant's re-sentencing "resolves the issues" raised by this habeas corpus application. Applicant then moved that the Court dismiss his application.

Assuming a timely motion for new trial was filed after sentencing, "the trial court's authority to rule on a motion for new trial extends to the seventy-fifth day . . . after sentence is imposed or suspended in open court." *State v. Moore*, 225 S.W.3d 556, 569 (Tex. Crim. App. 2007); TEX. R. APP. P. 21.8(a). Applicant was sentenced on July 11, 2007. The trial court did not have authority to entertain the motion, set aside the prior conviction, and re-sentence applicant over four years later. *See Ex parte Alexander*, 685 S.W.2d 57, 60 (Tex. Crim. App. 1985) (noting that, "[i]t is well established that only the Court of Criminal Appeals possesses the authority to grant relief in a post-conviction habeas corpus proceeding where there is a final felony conviction. The trial court is without such authority."). Accordingly, the judgment of December 21, 2011 is void. *Id.*

The trial court shall vacate its judgment of December 21, 2011 purporting to re-sentence Applicant. The trial court shall then determine whether Applicant and appointed habeas counsel wish to proceed with his motion to dismiss the writ application. If the trial court determines that Applicant no longer wishes dismiss the application, it shall make findings of fact and conclusions of law in accordance with this Court's order of September 28, 2011.

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, and the indictment, judgment, and any plea papers from Cause No. 06-6547-C, 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: April 18, 2012

Do not publish