



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-76,035-02

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**EX PARTE BENJAMIN ALAN MORRISON, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 2010-997-C1 IN THE 19TH DISTRICT COURT  
FROM MCLENNAN COUNTY**

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*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 eight counts of aggravated sexual assault and sentenced to forty years' imprisonment on each count. The Tenth Court of Appeals dismissed his appeal. *Morrison v. State*, No. 10-11-00157-CR (Tex. App.—Waco June 29, 2011, no pet.).

Applicant contends that trial counsel rendered ineffective assistance because, among other things, he failed to investigate Applicant's alibi and advised him that if he rejected the State's plea offer, he would receive eight life sentences that would run consecutively.

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). 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 him 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. Specifically, the trial court shall determine whether Applicant's military records show that he could not have sexually assaulted the complainant on the dates alleged in the indictment, as Applicant contends, and what advice, if any, counsel gave Applicant about his punishment if he rejected the State's plea offer. 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: June 6, 2012

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