



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-76,130-02

EX PARTE TIMOTHY BECK, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 35,571-A IN THE 66TH JUDICIAL DISTRICT COURT
FROM HILL 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 attempted tampering with or fabricating physical evidence and sentenced to twenty years' imprisonment. The Tenth Court of Appeals affirmed his conviction. *Beck v. State*, No. 10-08-00365-CR (Tex. App. – Waco, September 1, 2010, pet ref'd.))

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel failed to investigate, failed to interview the State's witnesses, failed to object to the empaneling of juror who was a personal friend of the prosecutor, failing to call Applicant's "alibi"

witnesses, failing to object to perjured testimony, failing to object to extraneous offense evidence during the guilt/ innocence phase, failing to question whether the baggie introduced into evidence was the same baggie handled by Applicant, failing to object to the testimony of a surprise witness, failing to object to improper argument by the prosecutor, and failing to file a motion for new trial.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Lemke*, 13 S.W.3d 791,795-96 (Tex. Crim. App. 2000). 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 obtain an affidavit from Applicant's trial counsel responding to Applicant's claims of ineffective assistance of counsel. 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 first supplement the habeas record with copies of the indictment and judgment, any written motions filed before trial, a transcript of the trial proceedings, and any other documents relevant to Applicant's habeas claims. The trial court shall then make findings of fact as to whether the performance of Applicant's trial attorney 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. 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.

Filed: February 29, 2012
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