



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. 76,662-01

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**EX PARTE KENNETH W. SMITH, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 92-0194 IN THE 71<sup>ST</sup> DISTRICT COURT  
FROM HARRISON 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 writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of burglary of a building and sentenced to twenty-five years' imprisonment.

Applicant contends that he is being denied release to mandatory supervision. Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Mabry*, 137 S.W.3d 58 (Tex. Crim. App. 2004). 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 shall order the Texas Department of Criminal Justice's Office of the General Counsel to file an affidavit addressing whether Applicant is eligible for release to mandatory supervision for this conviction and, if so, whether his calendar time served and accrued good conduct time equal the maximum term to which he was sentenced. If he is otherwise eligible for release to mandatory supervision but is still being held, the affidavit shall address why he is being held and provide calculated dates relating to any parole eligibility, projected release, and maximum discharge.

The trial court may also order depositions, interrogatories or a hearing. 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 first as to whether Applicant's conviction is being treated by TDCJ as "mandatory eligible." The trial court shall make specific findings as to whether Applicant is being held by TDCJ for the instant conviction, and if so, whether his confinement is legal, given the applicable law governing mandatory supervision for this conviction. 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: December 14, 2011

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