



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-76,799-01

EX PARTE DANIEL RIVERA, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 0317157 IN THE 8TH DISTRICT COURT
FROM HOPKINS 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 felony driving while intoxicated as a habitual felony offender and was sentenced to thirty years' imprisonment. He did not appeal his conviction.

In his writ application, Applicant raised two claims of ineffective assistance of trial counsel. The first claim was remanded to the trial court for further information, and the case has been returned to this Court. In the remanded claim, Applicant argued the DWI the subject of this habeas application

could not be charged as a felony offense because one of the prior DWI misdemeanor convictions used for jurisdictional enhancement was void. He states counsel was not waived in that prior DWI case. *See Ex parte Olvera*, 489 S.W.2d 586, 589 (Tex. Crim. App. 1973); *see also Nix v. State*, 65 S.W.3d 664, 668 (Tex. Crim. App. 2001). Had trial counsel investigated and learned this fact, Applicant indicates that he would not have pleaded guilty to the current DWI because it could not have been charged as a felony.

On remand the trial court obtained affidavits from trial counsel and entered findings. Even so, this Court requires further information that resolves the following issues:

- Was Applicant indigent during the prior DWI proceedings in cause number 6526 from the County Court of Kinney, dated January 30, 1987?
- Did Applicant request the appointment of counsel in the prior Kinney County DWI proceeding?
- Did Applicant waive counsel in the prior Kinney County DWI proceeding?
- Did Applicant enter a guilty plea in the prior Kinney County DWI proceeding without the assistance of either appointed or retained counsel?
- Has Applicant been convicted of any other DWI that could have been used as a jurisdictional enhancement in place of the Kinney County DWI?

The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d) to resolve the above issues, and the trial court shall make any findings of fact and conclusions of law that it deems relevant and appropriate regarding them. 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.

Applicant also alleges he never received a copy of the affidavits filed by trial counsel although the ODI entered by the trial court ordered the district clerk to send them to him once filed; he complains he is unable to adequately raise objections without the affidavits. Copies of the affidavits should be provided to Applicant.

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 forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: September 12, 2012
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