



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-76,985-01

EX PARTE JOHN PAUL YOUNGBLOOD, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 35,132-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 pleaded guilty to driving while intoxicated and was sentenced to thirty years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel advised him that he would receive ten years' probation if he pleaded guilty or true. Applicant also alleges that counsel erroneously advised him to waive his right to appeal, failed to object to either the indictment or lack of indictment prior to trial, and failed to challenge a video tape

of the traffic stop on the basis that it had been tampered with.

The habeas record contains no documents relating to Applicant's conviction or his habeas allegations. There is no charging instrument, no plea documents, no judgment and no trial docket. There is no affidavit from trial counsel, no answer from the State, and no findings of fact from the trial court.

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 order Applicant's trial counsel to file an affidavit 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 charging instrument, the judgment, the trial docket, any plea papers including waivers and stipulations, and any evidence introduced in support of Applicant's plea. The trial court shall 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 1, 2011
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