



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-76,994-02

EX PARTE DONALD GENE FULLER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2006CR5920 IN THE 226TH DISTRICT COURT
FROM BEXAR 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of two counts of aggravated sexual assault of a child and three counts of indecency with a child by contact. He was sentenced to forty-seven years' imprisonment for each aggravated sexual assault conviction, twelve years' imprisonment for one indecency with a child by contact conviction, and thirteen years' imprisonment in two indecency with a child by contact causes. The Fourth Court of Appeals affirmed his aforementioned convictions and reversed and rendered a judgment of acquittal in a fourth count of indecency with a child. *Fuller v. State*, No. 04-08-00446-CR (Tex. App.—San

Antonio Jul. 15, 2009) (unpublished).

Applicant challenges his conviction, raising eight grounds for relief. In the fourth ground, he contends that he suffered multiple punishments in violation of double jeopardy principles. The trial court found, *inter alia*, that this claim should have been raised on direct appeal and that Applicant is not entitled to raise the claim on habeas corpus. However, a “claimed violation of the prohibition against double jeopardy is cognizable on post-conviction habeas corpus.” *Ex parte Diaz*, 959 S.W.2d 213, 214 n.2 (Tex. Crim. App. 1998).

Applicant has alleged facts that, if true, might entitle him to relief. *Evans v. State*, 299 S.W.3d 138 (Tex. Crim. App. 2009); *Ochoa v. State*, 982 S.W.2d 904, 908 (Tex. Crim. App. 1998). 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.

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 and conclusions of law as to whether Applicant has suffered multiple punishments based on a single act. The trial court shall make specific findings as to whether Applicant’s convictions in Counts VII and VIII were based on the same act. 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: May 16, 2012

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