



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,077-02

EX PARTE MELVIN AVINA, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. D-1-DC-09-300140 IN THE 147TH DISTRICT COURT
FROM TRAVIS 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 aggravated robbery and sentenced to twenty-eight years' imprisonment. His appeal was dismissed for want of jurisdiction. *Avina v. State*, No. 03-11-00182-CR (Tex. App.—Austin, Jun. 9, 2011) (unpublished).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance that rendered his plea involuntary.

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 record shows that the trial court entered an untimely order designating issues, singling out several allegations of ineffective assistance of counsel to be resolved. The trial court shall obtain a response from Applicant's trial counsel addressing the issues highlighted in the court's order designating issues and order for filing affidavits, signed on February 16, 2012. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

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 as to whether the performance of Applicant's trial attorney was deficient and, if so, whether counsel's deficient performance caused Applicant's guilty plea to be involuntary. The trial court shall make specific findings addressing the issues designated for resolution in the trial court's untimely order designating issues and order for filing affidavits. 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: April 25, 2012

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