



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,086-01

EX PARTE O'KEITH LAVAR ADAMS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W94-58388-V(A) IN THE 292ND JUDICIAL DISTRICT COURT
FROM DALLAS COUNTY**

Per curiam. Keasler, J., not participating.

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 murder and sentenced to ninety-nine years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Adams v. State*, No. 05-96-00491-CR (Tex. App. – Dallas, December 11, 1997).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel failed to challenge the voluntariness of his statement to a detective, advising Applicant to take the stand and admit that the detective had read him the *Miranda* warnings, failing to object to improper argument by the prosecutor, and failing to present a sudden passion issue at punishment.

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 obtain an affidavit from Applicant's trial counsel 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 a copy of the trial record, including the charging document, the judgment, any written motions filed prior to trial, and a transcript of all proceedings, including any pre-trial hearings. The trial court shall then 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 29, 2012

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