



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,116-01

EX PARTE WILLIE BERNARD CAMPBELL, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W06-66409-V(A) IN THE 292ND JUDICIAL DISTRICT COURT
FROM DALLAS 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 harassing a public servant and sentenced to thirty-five years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Campbell v. State*, No. 05-08-00736-CR (Tex. App. – Dallas, July 14, 2009).

Applicant contends, *inter alia*, that his appellate counsel rendered ineffective assistance because counsel told Applicant that a petition for discretionary review had been filed on his behalf, when in fact Applicant's petition for discretionary review was dismissed by this Court as untimely

filed.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 608 (1984); *Ex parte Lemke*, 13 S.W.3d 791,795-96 (Tex. Crim. App. 2000). In these circumstances, additional facts are needed. Pursuant to *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 appellate counsel to submit an affidavit responding to Applicant's claim of ineffective assistance of counsel on appeal. 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 make findings of fact as to whether Applicant's appellate counsel did tell Applicant that he was filing a petition for discretionary review on his behalf, and if so, why the petition was not timely filed. The trial court shall also make findings as to whether appellate counsel informed Applicant that his conviction had been affirmed and that he has a right to file a *pro se* petition for discretionary review. 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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