



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,246-02

**EX PARTE DRAKE LAFAYETTE WILLIS, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. F-0824020-T IN THE 283<sup>RD</sup> 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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated sexual assault of a child and sentenced to forty years' imprisonment. The Fifth Court of Appeals affirmed his conviction. *Willis v. State*, No. 05-09-00537-CR (Tex. App.—Dallas, June 22, 2010).

Applicant contends, *inter alia*, that the State withheld exculpatory evidence from the defense. He alleges that the State failed to provide certain phone calls recorded while he was incarcerated during which the complainant allegedly recanted her allegations. He also alleges that the State suppressed portions of witness statements and failed to provide a copy of a psychological evaluation

done on the complainant's mother pursuant to an order from the trial judge.

Applicant has alleged facts that, if true, might entitle him to relief. *Brady v. Maryland*, 373 U.S. 83 (1963); *Ex parte Kimes*, 872 S.W.2d 700, 702-703 (Tex. Crim. App. 1993). 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 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 and conclusions of law as to whether the State turned over all potentially exculpatory information to the defense. The trial court will determine whether all phone recordings from the time when Applicant was incarcerated prior to trial were provided to the defense. The trial court shall determine whether any witness statements were not turned over to the defense, and whether the defense received a copy of any psychiatric evaluation done on the complainant's mother pursuant to an order from the trial judge. If any of this information was not released to the defense, the trial court shall determine whether that information was in the possession of the prosecution, favorable to the defense, and material to the outcome of trial. 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: June 27, 2012

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