



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,376-01

EX PARTE ROY WAYNE RIDDLE, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 05CR-166 IN THE 349TH JUDICIAL DISTRICT COURT
FROM HOUSTON 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 pleaded guilty to one count of aggravated assault and originally received five years' deferred adjudication community supervision. His guilt was later adjudicated, and he was sentenced to eleven years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that his adjudication counsel rendered ineffective assistance because counsel failed to investigate or communicate with Applicant, failed to interview witnesses,

and persuaded Applicant to pleaded guilty in exchange for an eleven-year sentence by telling him that the trial court would give him twenty-five years' imprisonment if he did not do so. The maximum sentence to which he would have been subject after adjudication would have been twenty years.

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 adjudication 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 make findings of fact as to whether Applicant's counsel at adjudication told Applicant that he would receive a 25-year sentence from the court if he did not enter into a plea agreement with the State. The trial court shall make findings as to whether the performance of Applicant's adjudication 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: April 25, 2012
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