



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,395-01

EX PARTE JUSTIN TEVIS, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 19793 IN THE 88TH JUDICIAL DISTRICT COURT
FROM HARDIN 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 burglary of a habitation and originally received deferred adjudication community supervision. His guilt was later adjudicated, and he was sentenced to five years' imprisonment. He did not appeal his conviction.

Applicant contends that his trial counsel rendered ineffective assistance because failed to investigate or visit the scene of the alleged burglary and failed to advise Applicant of the elements of the offense of burglary of a habitation. Applicant alleges that the building he entered was

abandoned, and that he did not take anything from the building. Applicant alleges that had he known what the elements of burglary of a habitation were, he would not have pleaded guilty to the offense in exchange for deferred adjudication community supervision.

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 order Applicant's trial counsel to submit an affidavit 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 copies of the plea papers in this case, specifically the admonishments and any stipulations, judicial confessions, or plea agreements signed by Applicant. The trial court shall then make findings of fact as to whether Applicant was advised of the elements of the offense of burglary of a habitation, and whether there was evidence introduced to support the plea. The trial court shall make findings 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: April 25, 2012
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