



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,824-01

**EX PARTE ANTHONY LEE HARDEMAN, Applicant**

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 45195-C IN THE 89<sup>TH</sup> DISTRICT COURT  
FROM WICHITA 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 murder and sentenced to sixty years' imprisonment. The Second Court of Appeals affirmed his conviction. *Hardeman v. State*, No. 02-10-00025-CR (Tex. App. – Fort Worth, May 19, 2011, *no pet.*).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel failed to preserve error when Applicant was prevented from testifying to hearsay during the punishment phase of trial. Applicant alleges that he would have been able to establish that he killed the victim under the influence of sudden passion if he had been permitted to testify to what the

victim said to him just before the shooting. The trial court sustained the State's hearsay objections, and counsel did not make an offer of proof as to what Applicant's proposed testimony would have been.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). 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 trial counsel to respond to Applicant's claim 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 and conclusions of law as to whether the performance of Applicant's trial counsel 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. 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 forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: August 22, 2012  
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