



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,867-01

EX PARTE DONALD EDWARD BERRY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 1168014 IN THE 177TH DISTRICT COURT
FROM HARRIS 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 and sentenced to fifteen years' imprisonment. He did not appeal his conviction.

Applicant filed a pro-se application for a writ of habeas corpus on February 18, 2011, alleging that trial counsel did not perfect appeal. Shortly thereafter, the trial court appointed habeas counsel to represent Applicant. Habeas counsel then amended Applicant's writ application by filing a supplemental application on January 30, 2012, contending in two grounds that Applicant's guilty plea was involuntary due to ineffective assistance of counsel. Habeas counsel then filed motions to

dismiss the writ application and to withdraw as counsel, both of which were granted by the trial court. None of habeas counsel's motions contain Applicant's signature, but the motion to dismiss the writ application states that Applicant gave "express permission."

After the habeas record was forwarded to this Court, Applicant sent a request to this Court, alleging that he has never seen the supplemental writ application filed by counsel and requesting that the proceedings be stayed for him to review the writ application to make an informed decision as to how to proceed.

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). 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 addressing Applicant's wishes as to how to proceed with the writ applications. The trial court shall make specific findings as to whether Applicant wishes to dismiss either the February 2011 application, the January 2012 supplement, or both. If applicant wishes to proceed, the trial court shall make findings of fact and conclusions of law addressing the grounds he chooses to pursue. 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 the applications and, if necessary, 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
Do not publish