



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-77,916-01

EX PARTE CHAD WAYNE CARRIKER, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 08-5-7906 IN THE 24TH DISTRICT COURT
FROM JACKSON 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 pleaded guilty and was convicted of aggravated robbery and sentenced to twenty-five years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that trial counsel was ineffective for failing to object to the trial court's order to pay attorney fees, and for encouraging him to plead guilty without telling him that the aggravating factor in the robbery, use of a firearm, could not have been proven because

Applicant used a toy gun. On August 5, 2009, the trial court signed the judgment and sentence in this cause and ordered that \$987.50 in attorney's fees be added and paid by Applicant. Applicant contends that the trial court erred in entering this order because it failed to determine whether he could pay the attorney's fees and that counsel failed to object to this order and inform him of his right to appeal such order. TEX. CODE CRIM. PRO. Art. 26.05(g); *Armstrong v. State*, 340 S.W.3d 759, 767 (Tex. Crim. App. 2011).

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 608 (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 a response from counsel regarding 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).

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 him at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings as to whether the imposition of attorney fees occurred after Applicant was determined to be indigent and without the determination of a change in financial status. If so, the trial court shall make findings of fact as to when Applicant and trial counsel received notice of the order to pay attorney fees. The trial court shall make findings as to whether the payment of attorney fees was an affirmative part of Applicant's plea bargain agreement. The trial court shall make findings as to whether counsel informed Applicant of his ability to appeal the imposition of attorney fees. The trial court shall make findings as to whether counsel investigated

the allegation that Applicant was using a toy gun and that the aggravating factor would not have been able to be proven. Finally, the trial court shall make findings and conclusions as to whether trial counsel's performance 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 claims 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: August 22, 2012
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