



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,317-01

EX PARTE BOBBY REESE SKINNER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 48,685-A IN THE 30TH 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 possession of methamphetamine as a repeat felony offender and was sentenced to life in prison. The Second Court of Appeals affirmed the conviction and sentence. *Skinner v. State*, No. 02-10-00193-CR (Tex.App.—Fort Worth del. Aug. 31, 2011).

Applicant alleges that his trial and appellate counsel provided ineffective assistance, that there was no evidence to support the conviction, and that he was denied a fair trial due to juror bias.

Regarding the ineffective assistance of trial counsel claim, Applicant raises several complaints. He claims that trial counsel admitted to not examining the State's evidence and that counsel was not prepared for trial, as evidenced by counsel's announcement of not ready and his requests for continuances. Consequently, Applicant argues, trial counsel proceeded to trial but failed to challenge the veracity of law enforcement testimony and failed to mount a Fourth Amendment challenge. He also complains that trial counsel failed to adequately examine witnesses, who Applicant states counsel never interviewed or investigated, that trial counsel failed to present a plausible defense because counsel was completely unaware of the facts of the case, and that trial counsel failed to adequately prepare for Applicant's own testimony. Applicant also alleges trial counsel failed to adequately *voir dire* the venire panel to prevent the aunt of the State's lead investigator of the case from sitting on and contaminating the jury with facts not in evidence.

Regarding the ineffective assistance of appellate counsel claim, Applicant alleges appellate counsel raised only one issue that was frivolous, but other, meritorious issues were available and should have been raised. He contends these issues were developed at trial and at a motion for new trial hearing where it was adduced that insufficient evidence—in fact no evidence—connected him to the methamphetamine and where it was shown juror bias had infected his trial, rendering it fundamentally unfair.

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). There is no response from either trial or appellate counsel in the record provided to this Court, and there are no findings from the trial court. 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 and appellate counsel to respond to Applicant's claims of ineffective assistance by explaining their respective representation of Applicant, including applicable strategy and tactical decisions. To obtain the responses, 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 Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact and conclusions of law regarding Applicant's claims of ineffective assistance of trial and appellate counsel, no evidence, and juror bias. The trial court may also make any other findings of fact and conclusions of law 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: October 3, 2012
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