



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-78,326-01 & WR-78,326-03

**EX PARTE JORGE ALBERTO ZELAYA
AKA JAMIE ALEXANDER CARRANZA, Applicant**

**ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. 1132278 & 1132280 IN THE 209TH DISTRICT COURT
FROM HARRIS COUNTY**

Per curiam. Alcala, J. Not Participating.

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 these applications for writs of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated sexual assault of a child and burglary of a habitation. He was sentenced to life imprisonment in each case. The First Court of Appeals affirmed his convictions. *Zelaya v. State*, Nos. 01-09-00376-CR & 01-09-00378-CR (Tex. App.—Houston [1st Dist.] Apr. 29, 2010) (unpublished).

Applicant contends, *inter alia*, that he convictions in these cases violate double jeopardy and that appellate counsel rendered ineffective assistance because did not raise double jeopardy on direct

appeal. The habeas record contains a key inconsistency: though Applicant was indicted for and judicially confessed to burglary of a habitation in Cause 1132280 under Section 30.02(a)(3) of the Penal Code, the judgment suggests a conviction under Section 30.02(a)(1). “It is well-settled that a defendant may not be punished for both the underlying felony and burglary if the burglary allegation is that the defendant entered a home without the consent of the owner and *then* committed the underlying felony within the home as defined in § 30.02(a)(3).” *Langs v. State*, 183 S.W.3d 680, 686 (Tex. Crim. App. 2006).

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Gonzalez v. State*, 8 S.W.3d 640, 643 (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 counsel to respond to Applicant’s claim of ineffective assistance of appellate 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 convictions in both causes constitute multiple punishments under applicable double jeopardy law. The trial court shall also make findings of fact and conclusions of law as to whether the performance of Applicant’s appellate counsel was deficient and, if so, whether counsel’s deficient performance prejudiced Applicant. The trial court shall make specific findings addressing which burglary theory Applicant

was convicted of committing. If the trial court finds that Applicant was convicted of burglary of a habitation with the intent to commit a felony, it shall also make findings detailing how this conviction was authorized in light of the charging instrument and judicial confession in the habeas record. 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.

These applications 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: November 14, 2012
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