



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,329-01

EX PARTE JOSE EDGAR HERNANDEZ, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. F-0946780-H IN CRIMINAL DISTRICT COURT NO. 1
FROM DALLAS 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 continuous sexual abuse of a child and sentenced to imprisonment for life. The Fifth Court of Appeals affirmed his conviction. *Hernandez v. State*, No. 05-10-00493-CR (Tex. App.—Dallas Oct. 27, 2011, pet. ref'd).

Applicant contends, among other things, that trial counsel rendered ineffective assistance because he failed to inform Applicant of the State's plea offers. Applicant has alleged facts that, if true, might entitle him to relief. *Missouri v. Frye*, 566 U.S. ___, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012). 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. 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 of fact and conclusions of law. If the trial court finds that the State made plea offers and counsel failed to timely convey these to Applicant, the trial court shall determine whether there is a reasonable probability that Applicant would have accepted one of the plea offers and that the plea would have been entered without the State canceling it and the trial court refusing it. The trial court shall also determine whether there is a reasonable probability that the "end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." *Frye*, 132 S. Ct. at 1409. 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.