



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-16,184-02

EX PARTE FREDRICK WAYNE JOHNSON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 527808-A 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 life imprisonment. The Fourteenth Court of Appeals affirmed his conviction. *Johnson v. State*, 800 S.W.2d 563 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd).

In 2010, Applicant filed a *pro se* application and claimed, among other things, that he is actually innocent and that the complainant made false statements. In 2011, counsel filed a supplemental application and claimed that Applicant is actually innocent. In 2014, she filed a second

supplemental application and added a second claim: the State failed to disclose exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

The trial court made findings of fact and conclusions of law and determined that Applicant had not established that he is actually innocent. We agree. The trial court did not, however, address Applicant's original *pro se* claims and his supplemental *Brady* claim. We are unable to determine from the record whether Applicant has abandoned these claims or the trial court decided not to address them.

Applicant has alleged facts that, if true, might entitle him to relief. *Brady v. Maryland*, 373 U.S. 83 (1963); *Ex parte Chavez*, 371 S.W.3d 200 (Tex. Crim. App. 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 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.*

Applicant appears to be represented by counsel. If he is not and the trial court elects to hold a second 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 determine whether Applicant has abandoned his other claims. If the trial court finds that he has not, the trial court shall determine whether Applicant's due process rights were violated because the State withheld exculpatory evidence and relied on false testimony. 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.

Filed: June 11, 2014
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