



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-80,751-01

EX PARTE CHRYSTOPHER DON PRECIADO, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 60196-01-A IN THE 47TH DISTRICT COURT
FROM POTTER 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 two counts of aggravated robbery and sentenced to forty years' imprisonment. The Seventh Court of Appeals affirmed his conviction. *Preciado v. State*, No. 07-10-00242-CR (Tex. App. – Amarillo, July 13, 2011).

Applicant contends that his appellate counsel rendered ineffective assistance because counsel failed to timely notify Applicant that his conviction had been affirmed. In support of his claim, Applicant provided a copy of a response to his request to the unit mail room as to whether he had

received any mail from his appellate attorney during the period between the issuance of the appellate opinion on July 13, 2011, and the date of the request. That response indicated that Applicant received a letter from appellate counsel on August 27, 2012. Applicant alleges that it was not until this date that he received notification of the court of appeals' decision from appellate counsel.

On January 29, 2014, this Court remanded to the trial court to obtain an affidavit from appellate counsel and findings of fact addressing Applicant's allegations. On April 18, 2014, this Court received the supplemental record containing an affidavit from appellate counsel. According to appellate counsel's affidavit, he notified Applicant of the court of appeals' opinion and of his right to file a *pro se* PDR by way of a letter dated July 15, 2011. Based on appellate counsel's affidavit, the trial court finds that appellate counsel timely notified Applicant of the appellate court's decision. The trial court concludes that appellate counsel was not ineffective.

Because the record contains conflicting information regarding the date upon which appellate counsel notified Applicant of the court of appeals' decision and the date upon which Applicant received such notification, additional facts are needed. Pursuant to *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 an affidavit from the supervisor of the unit mail room where Applicant was confined during the applicable period, stating whether Applicant received any other legal mail between July 13, 2011, and August 27, 2012, when Applicant alleges that he received appellate counsel's notification. The trial court shall also order appellate counsel to state whether he complied with Rule 48.4 of the Texas Rules of Appellate Procedure. If appellate counsel did comply with Rule 48.4, appellate counsel shall submit proof of the date upon which he mailed the notification to Applicant, and the date upon which Applicant received the notification. If appellate counsel did not

comply with Rule 48.4, appellate counsel shall submit any other available proof of the date upon which he mailed the notification to Applicant. 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 as to the date upon which appellate counsel mailed the notification to Applicant, and the date upon which Applicant received such notification. 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: May 7, 2014
Do not publish