



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-80,882-01

**EX PARTE MARVIN WAYNE LYONS, Applicant**

ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 2006-533-C2A IN THE 54TH DISTRICT COURT  
FROM MCLENNAN 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 with intent to deliver a controlled substance and sentenced to ten years' imprisonment. He did not appeal his conviction.

Applicant contends, among other things, that counsel's deficient conduct rendered his guilty plea involuntary. The trial court made findings of fact and conclusions of law and recommended that we deny relief. It concluded, among other things, that counsel properly advised Applicant at all

times and was effective in her representation of him. We do not agree. On the record before this Court, counsel's conduct was deficient during the plea hearing. While the trial judge wisely admonished Applicant that there was no guarantee he would receive credit on his federal sentence, counsel said or suggested otherwise.<sup>1</sup>

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). 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 give Applicant the opportunity to respond and state whether he would have insisted on a trial but for counsel's deficient conduct. 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.

After reviewing Applicant's response, if any, the trial court shall make further findings of fact and conclusions of law as to whether Applicant would have insisted on a trial but for counsel's deficient conduct. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition

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<sup>1</sup>For example, after the trial judge told Applicant, "I'm not gonna tell you that it can run concurrently," counsel said, "Did you hear what he said? He said, I'm not gonna make it run consecutive. Okay? So if he doesn't make it run consecutive, by law, it's concurrent. He doesn't want—I think—do I hear you—."

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 14, 2014  
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