



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-81,157-01 AND WR-81,157-02

EX PARTE DAVID LEE JETTON, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. FR42049-A AND FR43095-A IN THE 264TH DISTRICT COURT
FROM BELL 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 originally charged with capital murder, but pleaded guilty pursuant to a plea agreement to one charge of murder, and one charge of burglary of a habitation. Applicant was sentenced in accordance with the plea agreement to life imprisonment for the murder charge, and fifty years' imprisonment for the burglary charge, to be served consecutively. He waived his right to appeal as part of the plea agreement.

Applicant contends, among other things,¹ that his trial counsel rendered ineffective assistance for advising Applicant to plead guilty, waive issues raised in a pre-trial suppression motion, waive his right to concurrent sentences, and waive his right to appeal.

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 shall order trial counsel to respond to Applicant's claims of ineffective assistance of counsel. Specifically, trial counsel shall state what advice he gave to Applicant with regard to whether to plead not guilty and go to trial. Counsel shall describe the plea negotiations and any investigation and trial preparation he performed. Trial counsel shall state whether he advised Applicant that he would be eligible for parole after serving fifteen years, and whether he discussed with Applicant the effect that consecutive sentences would have on Applicant's parole eligibility. Trial counsel shall also state whether he advised Applicant that his sentences could not be "stacked" if he pleaded guilty in a single criminal proceeding, and whether he advised Applicant that he could waive his right to concurrent sentences. 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 first supplement the habeas record with copies of the plea documents,

¹This Court has reviewed Applicant's other claims and found them to be without merit.

including the written admonishments, waivers and stipulations, and a transcript of the plea proceedings. If a hearing was held on Applicant's motion to suppress, the trial court shall supplement the habeas record with a transcript of that hearing. The trial court shall make findings of fact as to whether Applicant's pleas to these two charges were entered at the same time, and as to whether Applicant was found guilty and sentenced for both offenses in a single proceeding, or whether two separate plea proceedings were conducted. The trial court shall make findings of fact and conclusions of law as to whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. 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.

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: April 30, 2014
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