



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-87,119-01

EX PARTE ISRAEL SAUCEDO MARTINEZ, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2012-DCR-03171-B IN THE 138TH DISTRICT COURT
FROM CAMERON 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 pleaded guilty to one count of continuous sexual abuse of a child, two counts of aggravated sexual assault of a child, one count of sexual assault of a child, and one count of indecency with a child by contact. He was sentenced pursuant to a plea agreement to three twenty-five year sentences and two twenty-year sentences, all running concurrently. He did not appeal his conviction.

Applicant contends that his trial counsel rendered ineffective assistance because counsel told Applicant that he could not have more time to seek another attorney. Applicant alleges that trial

counsel told him that his charges would be reduced to misdemeanors at the time of trial, and also alleges that trial counsel told him that he would receive a life sentence if he did not plead guilty pursuant to the plea agreement.

The record indicates that the trial court signed an order designating issues on July 11, 2017, requiring Applicant's trial counsel to submit an affidavit responding to Applicant's allegations. Because the order designating issues was entered more than thirty-five days after the State was served with a copy of the application, the application was properly forwarded to this Court without awaiting a response from trial counsel.

Nevertheless, 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.

We remand this application to the 138th District Court of Cameron County to allow the trial court to obtain an affidavit from trial counsel, complete an evidentiary investigation and enter findings of fact and conclusions of law. 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 whether the performance of Applicant's trial counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. The trial court shall make findings of fact and conclusions of

law as to whether Applicant's guilty plea was knowingly and voluntarily entered. 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 must be requested by the trial court and shall be obtained from this Court.

Filed: August 23, 2017
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