



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. WR-10,800-08 & -09

EX PARTE ROBERT DELGADO, Applicant

**ON APPLICATIONS FOR WRITS HABEAS CORPUS
CAUSE NOS. CR97-011 & CR97-012
IN THE 207TH JUDICIAL DISTRICT COURT
FROM COMAL COUNTY**

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial courts transmitted to this Court these applications for writs 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 life on both counts. The Third Court of Appeals affirmed his convictions. *Delgado v. State*, 986 S.W.2d 306, 307 (Tex. App.– Austin 1999, no pet.)

In a single ground, Applicant contends that he is actually innocent. Applicant has alleged facts that, if true, might entitle him to relief. *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996). 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. Applicant has provided an affidavit from Michael Munguia confessing to these crimes. If Mr. Munguia is available to testify, the trial court shall hold a live evidentiary hearing to obtain his testimony. The trial court may also call any other witnesses it feel necessary to determine the veracity of Applicant's claim.

It appears that Applicant is represented by counsel. The trial court shall determine whether Applicant is represented by counsel, and if not, 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 courts shall make findings of fact and conclusions of law as to whether:(1) the alleged perpetrator is credible; and, (2) Applicant has established by clear and convincing evidence that no reasonable juror would have convicted him in light of the new evidence. 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 courts have 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 courts' 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: December 18, 2013
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