



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-17,594-03

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**EX PARTE RICHARD A. CRUTCHFIELD, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 241-1405-09 IN THE 241<sup>ST</sup> DISTRICT COURT  
FROM SMITH COUNTY**

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*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 burglary of a habitation and sentenced to life imprisonment. The Twelfth Court of Appeals affirmed his conviction. *Crutchfield v. State*, No. 12-09-00440-CR (Tex. App.—Tyler Jul. 29, 2011) (unpublished).

Applicant contends, *inter alia*, that his trial counsel rendered ineffective assistance because counsel did not discover and prove that a prior conviction used to enhance the punishment range had been reversed on appeal and dismissed. The trial court entered findings affirming that the Henderson

County conviction in Cause No. A-4736 was reversed on appeal in a published opinion and that counsel did not argue that the State could not use it for enhancement. Though Applicant argues he would have faced a punishment range with a lower minimum sentence, the trial court concluded that there was “no credible evidence” that the outcome of the case would have been any different but for counsel’s inaction due to Applicant’s allegedly “extensive” criminal history.

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 claim of ineffective assistance of counsel. 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.*

It appears that Applicant is represented by counsel. If the trial court determines he is not represented by counsel and elects to hold a hearing, it shall then 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 additional 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 specific findings as to whether the State gave notice compliant with *Brooks v. State*<sup>1</sup> alleging any final felony convictions that could have been used to enhance a sentence that were not alleged in the indictment. The trial court also

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<sup>1</sup> 957 S.W.2d 30 (Tex. Crim. App. 1997).

shall make specific findings addressing whether the State argued that only a life sentence would be appropriate because Applicant had previously been sentenced to life in Cause No. A-4736. The trial court shall also make specific findings detailing the punishment evidence presented to jury with respect to the remainder of Applicant's criminal history. 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: September 19, 2012  
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