



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-40,442-06

EX PARTE BERNARDO R. DELEON, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 10-CR-3781-E IN THE 148TH DISTRICT COURT
FROM NUECES 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 possession with intent to deliver a controlled substance pursuant to a plea agreement, and was sentenced to twenty years' imprisonment.

Applicant contends that his trial counsel rendered ineffective assistance because counsel failed to timely file a notice of appeal or advise Applicant concerning his right to appeal. Although Applicant pleaded guilty pursuant to a plea agreement and the trial court sentenced Applicant in accordance with that agreement, Applicant had filed and obtained a ruling on a motion to suppress

evidence before he pleaded guilty. The trial court certified that Applicant had the right to appeal from matters raised by written motion filed and ruled on before trial and not withdrawn or waived.

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); *Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988). Although the State agrees that Applicant should be granted an out-of-time appeal, and states in its response that trial counsel was contacted and stated that he did not consult with or advise Applicant concerning direct appeal, this Court generally affords counsel the opportunity to respond personally to such allegations before being found ineffective. Therefore, the trial court shall order 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).

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 Applicant was denied his right to a meaningful appeal because Applicant's counsel failed to timely file a notice of appeal, or failed to advise Applicant regarding his right to appeal. 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: May 15, 2013
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