



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-63,269-02

EX PARTE RANDLE EUGENE McKINNEY, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 04-0255X IN THE 71ST DISTRICT COURT
FROM HARRISON 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 convicted of murder and was sentenced to twenty-eight years' imprisonment. He did not appeal the conviction.

Applicant argues that his mistaken understanding of parole eligibility based on misinformation counsel conveyed to him rendered his guilty plea involuntary. He contends that trial counsel told him he would become eligible for parole after serving seven years of his twenty-eight year sentence but that the advice proved to be incorrect.

In *Ex parte Moussazadeh*, 361 S.W.3d 684 (Tex.Crim.App 2012), this Court vacated a guilty-plea conviction and remanded the applicant for a new trial where the applicant's trial counsel had given misinformation regarding parole eligibility. Because *Moussazadeh* was decided after Applicant's initial writ application challenging this conviction was filed, it constitutes a new legal basis upon which Applicant may properly raise his claim. See TEX. CODE CRIM. PROC. art. 11.07 § 4(a)(1); *Ex parte Chavez*, 371 S.W.3d 200, 205 (Tex.Crim.App. 2012).

Applicant has alleged facts that, if true, might entitle him to relief. In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294 (Tex.Crim.App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall obtain a response from trial counsel regarding what advice, if any, trial counsel gave Applicant concerning eligibility for parole for this conviction. To resolve disputed factual issues, 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.* 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 in regard to Applicant's claim that his plea was involuntary. 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: October 3, 2012
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